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THE OMBUDSMAN OF ONTARIO

ANNUAL REPORT
1986-87

VOLUME I



The Ombudsman | Ontario

DANIEL G. HILL
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June 30, 1987

The Speaker
Legislative Assembly
Province of Ontario
Queen's Park
Toronto, Ontario

Dear Mr. Speaker:

It is an honour and a pleasure to present the Fourteenth Annual Report of the Ombudsman for the period April 1, 1986 to March 31, 1987.

This report is submitted pursuant to section 12 of the Ombudsman Act.

Yours sincerely,

Daniel G. Hill



DANIEL G. HILL

OMBUDSMAN'S MESSAGE

The mandate of the Ombudsman is to serve as the protector of the people in their dealings with government. In Ontario the Ombudsman fills this role by investigating complaints against the more than 500 provincial ministries, boards and agencies that employ more than 80,000 public servants.

Three years have passed since my appointment as Ombudsman when I made my commitment to expand public consciousness about the vital role and function of the Ombudsman and increase accessibility to the services of this Office.

In my last report I stated that the workload of this Office reached an all-time high with the closing of 5,235 jurisdictional complaints, 6,266 non-jurisdictional complaints, and 2,709 information requests for a total of 14,210 for fiscal year 1985-86.

In this report I am pleased to announce a new high water mark in the efficiency of this Office. During the past fiscal year 5,897 jurisdictional complaints, 8,424 non-jurisdictional complaints and 3,005 information requests were closed, for a total of 17,326, an increase of more than 20%. Moreover, during 1986-87 we closed 146 more **complaints** which had been under investigation for more than one year than we closed during the previous fiscal year. This represents an improvement of 30% in the number of older complaints closed and has reduced the number of ongoing **investigations** of more than one year in duration by about 25%.

There is no secret to this success. We are simply reaching out to more people and reaching them more effectively.

In the last year I launched several initiatives to improve our accessibility.

Our Directorate of Regional Services has been supplemented with an additional Field Officer for Sault Ste. Marie and surrounding area. Also, North Bay and area is being serviced by a Field Officer. A vigorous program of community outreach by all Regional Services personnel has produced excellent results.

The public education activities of this Office have been expanded with the creation of a Community Relations Unit to organize educational seminars, workshops and conferences.

We have intensified our outreach activities with organizations for the developmentally handicapped and with ethnocultural communities. This year's activities included contact with approximately 50 groups for the developmentally handicapped to explain our services and an all-day conference at the Columbus Centre with service professionals of Metro Toronto's Italian Community.

My commitment to ensure that Aboriginal people in Ontario have equal access to the services of my Office has been strengthened with the appointment of a Northern Native Liaison Officer, to work with our current Native Liaison Officer.

Another initiative has involved the reorganization of the investigative units of the Office in order to redefine areas of expertise in complaint handling and improve our ability to investigate effectively concerns raised with us by complainants.

A further initiative has involved efforts to ensure that all young offenders have direct access to the services of my Office. I urge the Ministries of Community and Social Services and Correctional Services to give serious thought to the expansion of in-house advocacy services for young offenders to better comply with the intent of the **Young Offenders Act** that provides for equal treatment in all respects, regardless of age.

Our outreach activities were also directed at the governmental organizations themselves. In order to strengthen our relationship with these organizations and resolve jurisdictional complaints quickly we have created several small, intensive working committees as informal complaint resolution mechanisms and channels for communications.

To date, these committees have involved the Ministry of Correctional Services, Workers' Compensation Board, Ministry of Education, Metro Toronto Housing Authority, and the Ontario Health Insurance Plan. Other governmental organizations will be included in the future.

And finally a new toll-free telephone number has been introduced. Now, the services of this Office are literally at the fingertips of all Ontarians.

As I have indicated in previous reports, I am committed to achieve the best possible economies and efficiencies with limited resources. Therefore, during the present fiscal year our resources will not be used to expand our programs, but rather to consolidate and strengthen our existing services.

I am pleased that the Standing Committee, in its 15th Report, recommended that the amendments to the Ombudsman Act be tabled in the Legislature without delay and that all parties cooperate in speeding the progress of the amending bill through the House. I am hopeful the Committee will, in the near future, be able to give careful review to my Position Paper on Expanding the Jurisdiction of the Ombudsman and thoroughly consider the issues of expanded "ombudsman function" in this province. Also, I commend the Committee for completing their second trip to the North, this time visiting communities and reserves in northwestern Ontario to witness at first hand the issues concerning people in the North and to help heighten awareness about the function of the Ombudsman.

I was pleased to accompany the Committee on this trip which included public hearings at Sioux Lookout and Thunder Bay. Also community meetings were held at Fort Severn Reserve and Big Trout Lake Reserve where more than 100 band members participated.

It is gratifying to know that the Committee sees a pressing need for a Federal Ombudsman and has recommended that the Premier of Ontario urge the federal government to establish a Federal Ombudsman with jurisdiction over all federal departments, programs and agencies that impinge upon the lives of people across the country.

I also wish to express my appreciation to Ontario's civil servants. Without their goodwill and continued cooperation the Ombudsman's efforts cannot be successful. I commend the commitment and professionalism that is so generally prevalent among our officials.

I express my gratitude to my excellent and able staff. The people of Ontario can be proud of the men and women of this Office who work so hard on their behalf.

I am proud of our progress in the last fiscal year and I will continue to work for full accessibility to our services for all the people of Ontario.



Daniel G. Hill

HIGHLIGHTS

This is the fourteenth occasion for tabling an Annual Report in the Legislative Assembly. The Report deals with the activities of the Ombudsman's Office from April 1, 1986 to March 31, 1987.

- This Report is divided into two volumes. Volume I is an overview of the operations of the Ombudsman; Volume II deals with recommendations made by the Ombudsman that were denied by various governmental organizations.
- Last fiscal year marks the largest volume of work handled by the Office since its inception. (p. 5)
- The Office was instrumental in obtaining a total of approximately \$1,000,000 in lump sum payments to workers in the past year. (p. 7)
- An amendment to the **Ombudsman Act** is discussed to ensure that developmentally handicapped residents of Schedule I facilities have the same rights of access to the Ombudsman as do residents of other provincial facilities. (p. 8)
- Concern is expressed about the inequities in care and resource allocation to young offenders that is contrary to the intent of the **Young Offenders Act**. (p. 9)
- Concern is expressed about the unacceptable living conditions at the Barrie Jail and overcrowding at the Whitby Jail. (p. 10)
- The Standing Committee on the Ombudsman is encouraged to consider expansion of the Ombudsman's jurisdiction. (p. 12)
- Statistical information presented includes the disposition of all complaints closed by this Office in fiscal year 1986-87. (pp. 14 to 17)
- Budgetary expenditures are presented. (p. 17).

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INTRODUCTION

This Annual Report covers the fiscal year from April 1, 1986 to March 31, 1987. The Report has been divided into two volumes.

Volume I provides an overview of our last fiscal year and includes a selection of case summaries which illustrate the varied complaints that come before the Ombudsman.

Volume II is devoted entirely to detailed summaries of recommendation denied cases and tables of all recommendations outstanding from past Reports.

Fiscal Year 1986-87

In commenting on the past fiscal year, 1986-87, I am delighted to report that our trend toward greater efficiency has increased dramatically. The number of complaints and information requests closed in the past fiscal year has increased from the previous year to an all-time high of 17,326, an increase of more than 20% over the previous fiscal year. This includes 5,897 jurisdictional complaints, 8,424 non-jurisdictional complaints and 3,005 information requests, compared to 5,235 jurisdictional complaints, 6,266 non-jurisdictional complaints and 2,709 information requests for the previous fiscal year.

Delays Outside Our Control

As I reported in my last Annual Report, our new computer system allows us to collect and maintain much more accurate statistics on all of our complaint handling processes. New reports from this system have provided management with tools for early identification of problem complaints, easy monitoring of investigative processes, and effective information for performance appraisals.

As part of the improvement in our collection of statistics, we have now started to collect information about the time taken by governmental organizations to respond to letters and reports at various stages of the investigation. While the collection of this data is still in its formative stage, I can report the following:

1. On the average, it takes a governmental organization four weeks to respond to our initial notice of intent to investigate.

2. Once a tentative conclusion and recommendation has been forwarded to the ministry for comment, an average of four months is taken by the government agency to respond.
3. A final report is responded to, within three and a half months on average.

These figures vary widely between ministries and agencies and I have not yet enough accurate data to pinpoint the problem areas. We will, however, be continuing to collect this type of information, and, in the next fiscal year, we will be able to use it to try to improve the speed with which governmental organizations respond to our contacts, and, in turn, strive to lower our response and reporting time.

INVESTIGATIVE REORGANIZATION

In April, 1985, a new administrative structure was put in place in my office comprised of five investigative teams and an intake area. This reorganization streamlined reception of complaints, and provided for development of areas of expertise in complaint handling.

This year, we have reviewed the effects of this reorganization, and made some adjustments to the assignments of policy areas, and the number of investigators per team. This has been necessary because of changes in the types of complaints we received. For example, the changes in structure at the Workers' Compensation Board have meant a substantial decrease in the number of complaints concerning Workers' Compensation coming to my Office. It was therefore necessary to reduce the number of investigators assigned exclusively to Workers' Compensation complaints, add several new policy areas to that team, and transfer some team members to other teams. These and other changes took place on April 1, 1987. We are continuing to monitor case loads and complaints received, to ensure that our organizational design meets current needs.

REGIONAL SERVICES

I remain very committed to a strong and diversified regional services program.

There are currently four full-time district offices outside of Toronto: Ottawa, Thunder Bay, Timmins and Kenora. Each of these offices is staffed by a District Officer and an Information Officer whose combined energies make the Office of the Ombudsman accessible to many groups and individuals in their respective areas.

In addition, during this past fiscal year, three part-time Field Officers have been operating in Windsor, London and Sault Ste. Marie. A fourth part-time Officer, in North Bay, has been appointed in order to maintain an appropriate service level following the closure of the full time North Bay Office.

The part-time Field Officers work out of their homes and reflect my attempt to provide as much accessibility as possible to the people of Ontario out of existing financial resources.

A major component of the entire Regional Services program is the activity of community outreach. All of the Regional Services staff, including the part-time Field Officers, devote a large part of their time engaging in public education with diverse groups, such as the elderly, the handicapped, labour, women, and native people. As a result of engaging in this activity during the past year, our Office has reached many more groups and citizens in the regional centres.

The past year witnessed a consolidation of efforts to forge a stronger link between the Office of the Ombudsman and native organizations, particularly rural and remote native communities in the province. To this end I employ two native people on staff. Mr. Allan Pelletier, Native Program Officer, acts as provincial liaison coordinator of all native activities and as a resource consultant to all our investigators when native complaints are received. During the past year Mr. Pelletier met with many of the major provincial native organizations and attended the annual conference of the Nishnawbe-Aski nation, Union of Ontario Indians, Association of Iroquois and Allied Indians, and Chiefs of Ontario. On behalf of our Office Mr. Pelletier attended in Ottawa at the First Ministers Conference on Aboriginal rights and Constitutional matters with observer status.

In addition, I created a new position, effective April 1, 1987, titled Northern Native Program Officer. Mary Lou Iahtail, the former district officer in the Timmins Office, was appointed to this position. She is fluent in English, French, and Ojicree. Ms. Iahtail will engage exclusively in outreach work in the remote native communities in an effort to provide increasing accessibility to people who cannot ordinarily reach the Ombudsman with complaints whether due to geographical or cultural remoteness or both.

As a reflection of my special interest in the unique problems of the developmentally handicapped, I have created a special project, within the Regional Services framework, whereby one of our most senior investigators engages in outreach activity and investigates complaints relating to persons with developmental handicaps.

Included in the plans for the next fiscal year are the conducting of community outreach events in each of the regional areas, a comprehensive study of northeastern Ontario in order to determine the best possible location for a new full-time office in that area, completion of an evaluation of the Field Officer project, and possible expansion to other parts of the province of the existing part-time field officer program.

PUBLIC EDUCATION

To make the services of this Office better known to all Ontarians I have reorganized the public education functions of this Office into a Communications and Publications Directorate and a Community Relations Unit.

Publications have been expanded to include regional newsletters. Our multilingual fact sheets, now in 12 languages, have been expanded to include Korean, Hindi and Kannada.

More emphasis has been placed on audio-visual materials. We have produced a 13-minute slide show and audio tapes on the role and function of the Ombudsman to assist our roster of public speakers when attending community functions.

The activities of our Community Relations Unit include the organization of seminars, workshops and conferences for front-line service providers, meetings with representatives of various communities, distribution of public education materials and attending and speaking at various public functions.

In October of this year a major public education initiative will be undertaken in the form of an Ombudsman Awareness Week so that more Ontarians will be made aware of this very vital service.

NEW APPOINTMENTS

During the past fiscal year I made the following appointments to my senior operating staff:

Assistant Director — Land Use, Resources, Revenue:
Catherine McKay

Community Relations Coordinator:
Karen Wheeler McSweeney

In addition, with the development of the new regional field officer program, I have appointed the following persons:

Field Officer — Sault Ste. Marie:
Johanna Bischooping

Field Officer — North Bay:
Pauline Desbiens

Also, in the Directorate of Regional Services:

Northern Native Program Officer:
Mary Lou Iahtail

GOVERNMENTAL COMMITTEES

The committees I reported on last year continue to provide a channel for communication and resolution of complaints between the Ombudsman's Office and various Ministries and Boards. In particular, the committee of officials from my Office and the Ministry of Correctional Services has met regularly to discuss cases and general issues. The Workers' Compensation Board committee has also provided an excellent forum for the resolution of complaints against that governmental organization.

Other liaison groups have also been formed. The Ministry of Education has cooperated with my Office in setting up a committee to review complaints against that Ministry. Similarly, the Metropolitan Toronto Housing Authority Chairman, John Sewell, has met with my staff and arranged for a priority review of complaints against that Authority by its staff members, to expedite resolution where possible. A recent initiative has resulted in closer cooperation between my Office and the Ontario Health Insurance Program, and meetings have been held with officials of other Ministries in an attempt to streamline our investigations.

I look forward to further fruitful contacts with Ministry officials, and am confident that many of the complaints we receive can be resolved in an informal way if channels of communication with the Ministry involved are well developed.

FINANCIAL COMPENSATION FOR COMPLAINANTS

As I have stated in previous reports, I would be concerned if the amount of financial compensation obtained by my Office on behalf of complainants were to become a measure of my effectiveness; I am convinced that many of the results I obtain are more important than mere amounts paid over. Nevertheless, it may be of some interest to note that my Office was instrumental in obtaining approximately \$1,000,000 in lump sum payments to workers through the Workers' Compensation Board in the past year. This compares most favourably with last year when a total of approximately \$500,000 was paid. I should add, however, that an unprecedented number of my recommendations were accepted in the present fiscal year, and fewer complaints will come to my attention in the future, given the changed structure of the Workers' Compensation appeals.

In other areas, financial compensation has been obtained for lost pension coverage, severance pay or vacation pay in employment complaints, and for legal fees unreasonably incurred by a complainant. Overpayments in taxes, compensation for errors in assessment, and rebates in sales taxes were also obtained.

In most of the areas we investigate, however, it is impossible to calculate compensation in monetary terms. Our investigation of complaints concerning social benefits, housing, health and education, for example, will often result in a recognition of eligibility for benefits, the amount of which cannot be determined as payments may be ongoing. Other less tangible benefits may lead to improved employment prospects, better living conditions, or a better education program for a child. While not measurable in dollar amounts, these achievements are some of our most important.

SERVICES FOR THE DEVELOPMENTALLY HANDICAPPED IN ONTARIO

Further to the appointment of a Special Projects Officer in April, 1986, whose responsibility has been to focus on the area of developmental handicap, there has been an increased awareness of the role, function, and appropriate use of my Office's services by individuals and groups with interests in this area. Our Officer has made contact with more than 50 Local Associations for the Mentally Retarded, Adult Protective Service workers, Service Coordinators, and other organized groups with a direct interest in developmentally handicapped Ontarians in order to enhance our accessibility and canvass them on issues of concern. In addition, many such organizations have made representations to our Officer either on behalf of individual clients or on more generic policy issues.

I have been struck by the wide diversity of interest groups with involvement in the area of developmental handicap. There is a sizeable contingent of groups which in some cases operates in isolation from the traditional service network. We have been able to provide informed advice on avenues of redress not previously considered to many of these groups. This action on the part of my Officer has often resulted in the resolution of issues without the commencement of formal investigations by the Ombudsman.

In the forthcoming months I intend to visit personally one or more Schedule I facilities to continue the institutional outreach program started by the Officer. As well there will be a continuation of community outreach and education to interest groups, complaint intake, and the investigation of complaints.

Further, I have requested an amendment to the **Ombudsman Act** to ensure that those residents of Schedule I facilities wishing to contact my Office directly will be provided with the same rights pursuant to section 17 (2) available to residents of other provincial facilities.

PSYCHOTRAUMATIC DISABILITY ENTITLEMENT

Last year I reported that a member of my investigative staff would begin a special study of our files containing objections to decisions made regarding psychotraumatic disability entitlement by the Workers' Compensation Board. A report is now in its final draft stage.

The study began with an overview of the Board's legislation, policy and practices concerning claims involving psychological problems, and then went on to look at our files to see how individual cases were handled.

Between 1977 and March 1986, 161 jurisdictional complaints respecting psychotraumatic entitlement were brought to this Office; of that number, 122 files contained either a report or a summary of facts detailed enough to provide explicit information for the study.

Very shortly the report will be sent to the Workers' Compensation Board to ask for its comments and, once the Board has had an opportunity to respond, the report will be made more widely available.

TIMMINS HOUSING AUTHORITY

As stated in the last Report, in response to a proportionately large number of complaints from tenants and applicants in the Moosonee area, I started a special project to investigate the Timmins Housing Authority's administration of rent-geared-to-income housing in Moosonee. The investigation was initiated in December of 1985, in accordance with Section 15 (2) of the **Ombudsman Act**. The investigation included interviews with Housing Authority staff, tenants and applicants, as well as an extensive review of the Housing Authority's tenant and applicant files. In December of 1986, the interim results of the investigation were reported to officials of the Housing Authority, the Ontario Housing Corporation and the Ministry of Housing and included approximately 40 recommendations concerning matters of housing policies, practices and procedures. A response from these agencies to the interim results was recently received and is under review.

MINISTRY OF HEALTH

NURSING HOME INVESTIGATION

In the previous Annual Report I discussed my investigation of the Ministry of Health's actions and decisions in response to allegations of sub-standard operations of Elm Tree Nursing Home.

On August 29, 1986, I issued my report on the results of this investigation and made a number of recommendations including the recommendation that the Ministry of Health develop a program for the placement of a full-time patients' advocate in each of the province's nursing homes.

The Deputy Minister responded that the issue of patients' advocates is currently under review by a commission headed by Sean O'Sullivan. I advised the Minister of my decision to accept his representation and requested that he inform me of the results of the commission's findings.

INSTITUTIONAL INVESTIGATIONS

The past year saw a significant increase in the extension of my services to persons confined to provincial government institutions. During the fiscal year, we handled and closed 20% more complaints from institutionalized persons than in the previous fiscal year. More importantly, our average daily in-progress caseload was reduced by 40% by the end of the year, an indication of our increasing ability to respond more quickly to the problems of institutionalized persons.

My staff in this area have an orientation to mediation and conciliation which is well suited to resolving complaints in institutional environments. This cooperative approach to complaint handling has been particularly well received by the Ministry of Correctional Services and has resulted in a consistently high success rate of complaint resolution and complainant satisfaction.

Although I believe my Office has already achieved a relatively high profile within institutional settings, I have always been concerned that every institutionalized person have the same access to the Ombudsman as any other citizen. My continuing visits to provincial government institutions have reinforced my belief that more education about the

role and function of the Ombudsman is required. Last year these visits included the Ottawa-Carleton, Quinte and Hamilton Wentworth Detention Centre. More visits to other institutions are planned for the coming year.

We recently hosted a group of correctional officers from the Ministry of Correctional Services for a two-day orientation to the Office of the Ombudsman. As well, we have agreed to participate in the development of a video-tape orientation program for newly arrived inmates at the Guelph Correctional Centre. These efforts reduce misconceptions and improve understanding and will be continued and expanded.

In addition, we have recently re-issued Ombudsman information posters to all Ministry of Correctional Services institutions and will shortly be providing the same materials to other provincial government institutions. In the spirit of cooperation, the Ministry of Correctional Services has agreed to mount our posters under plexiglass to ensure their permanence in the institutions.

At the same time, the Ministry of Correctional Services is rapidly expanding the Charge-a-Call telephone system which will allow inmates quicker and more direct access to the services of the Ombudsman when needed. Allowing inmates telephone access to the outside world, I believe, represents a major step forward. It recognizes that the majority of inmates are capable of responsible behaviour in their contacts with the community. Not only is this a great benefit to inmates who are now able to maintain community contact, but it reduces the heavy workload of institutional staff who may now properly devote more time to ensuring that the legal mandate of the Ministry is carried out with respect to inmate care.

In my last Annual Report and in my subsequent comments to the Standing Committee, I called upon the government to resolve the very real problems being caused by the continuation of the "split" jurisdiction for young offenders. I am pleased that the government has seen fit to transfer three secure custody facilities for young offenders from the Ministry of Community and Social Services to the Ministry of Correctional Services to alleviate the bed shortage caused by the rapid increase in the number of 16 and 17 year old young offenders being committed to secure custody.

However, this is a temporary solution. Nothing I have seen in the past year has changed my mind in calling on the government to end the "split" jurisdiction for young offenders. Until such time as young offenders come under one administrative umbrella, I believe that inequities in care and resource allocation will persist. This appears contrary to the intent of the **Young Offenders Act** that all young offenders, regardless of age, be treated equally in all respects.

Although my Office's jurisdiction to investigate complaints from young offenders is severely restricted by the existence of statutory complaint procedures in the enabling legislation, we will in the coming year renew our efforts to ensure that all young offenders have direct access to the services of my Office. I remain concerned that while the rights of young persons and avenues of redress are well set out in the legislation, many young people in conflict with the law lack the ability to exercise these rights by themselves. I therefore call upon the Ministries responsible to give very serious thought to the expansion of in-house advocacy services for young offenders.

Last year, attention was drawn in this Report to unacceptable living conditions for inmates at the outdated Barrie Jail. The government was urged to provide funds for the replacement of the facility. It is disappointing that no progress has been made in this regard. Although I am satisfied that the Ministry of Correctional Services has done whatever is possible with scarce resources to ameliorate conditions for inmates and staff at that institution, the quality of the environment at that institution does not meet minimum acceptable standards as we approach 1990.

Overcrowding has been a recurring problem in the provincial correctional system over the past ten years. In the recent past, this problem was the subject of legal action between the Ministry of Correctional Services and the Ontario Public Service Employees Union. Although this matter was resolved without the need for litigation, I believe that this problem may now be re-emerging. Over the past year, I have been alarmed at the increase in the density of inmate population in institutions on the fringe of Metropolitan Toronto. I am particularly alarmed about the situation at the Whitby Jail where my staff advise me that despite an increase in operational capacity in the last few years, inmates are regularly confined three to a cell which was originally constructed to house one inmate.

I believe that this high population density leads to increased tension. Under the circumstances, it is not surprising that my Office received more complaints from the Whitby Jail last year than from any other provincial correctional institution, notwithstanding that the Whitby Jail's operational capacity is only 30% that of larger Ministry institutions which produced half that number of complaints. We will be monitoring complaints received from this institution closely and will discuss our assessment of the situation with senior staff of the Ministry of Correctional Services.

SECONDMENT PROGRAM

In last year's report, I announced the commencement of a staff secondment program with the Ministry of Correctional Services. I am pleased to advise that we have now completed the first phase of this ongoing program and it has proven to be so worthwhile that we will be continuing and expanding it in the near future.

In the first phase, an experienced Probation and Parole Officer from the Ministry of Correctional Services spent nine months working as an Investigator with our Institutional Investigations team. This phase ended positively when the Ministry's secondee won a promotional competition to return to a more senior position in the Ministry.

As a result of our experience, we have asked the Ministry of Correctional Services to second another staff member to our Office this year and we are currently in the process of arranging for one of our investigators to be seconded to the Ministry of Correctional Services.

It is my belief that exchanges such as these will be of mutual benefit.

THE REPORT ON THE INVESTIGATION OF ARGOSY COMPLAINTS

The Report on the investigation of the Argosy complaints was delivered on November 21, 1986, to the Minister of Financial Institutions and Consumer and Commercial Relations and the Ontario Securities Commission. The Report concluded that there had been a number of administrative failures in the regulation of the Argosy Financial Group of Canada.

It recommended that the Ministries responsible compensate investors for 50% of their losses, plus interest. The Minister informed the Ombudsman that he would not implement this recommendation. As a result, the Report was sent to the Premier and brought before the Standing Committee of the Legislature on the Ombudsman.

Specifically, the Report found that: the government failed to regulate Argosy's syndicated mortgage business which involved \$21.7 million in investment funds from the public; it failed to investigate and take timely action against Argosy's conduct as a registered mortgage broker; and it failed to monitor and regulate Argosy's RRSPs. In addition, Argosy's debenture prospectuses were accepted by the Ontario Securities Commission, despite its officials' certain knowledge that Argosy was "in a great deal of trouble".

The complainants are investors, some of whom registered complaints seven years ago, shortly after Argosy's failure in March, 1980. The delays were a regrettable feature during this investigation. An initial delay of one year and eight months was necessary while the OPP completed its fraud investigation. Our files were closed during this time. The investigation was reopened in 1983 only after the previous Ombudsman gave the Attorney General an assurance that his investigation would not jeopardize the fraud trials that were then in preparation. Our investigation was conducted over a period of one year and nine months. Twenty-nine people were interviewed and Ministry files spanning 11 years were reviewed. The investigation was substantially completed by the end of 1984. However, in accordance with the assurance given to the Attorney General, no action was taken until the fraud trials were completed, convictions obtained and appeal periods expired.

The interim report inviting representations from the government and all parties concerned, was sent on November 25, 1985, pursuant to section 19 (3) of the **Ombudsman Act**, to the Minister and affected government agencies. The representations were made on August 7, 1986. The Minister's representations were made in two parts, the first dealing with the position of the Ontario Securities Commission and the second concerning the position of the Registrar of Mortgage Brokers. Further representations were made by other affected individuals.

The final report on the Argosy investigation was referred to the Premier on January 23, 1987, and duly tabled in the House as a Special Report. The Standing Committee on the Ombudsman considered the Report in April.

In May, members of the Committee decided, by a one-vote margin, not to support my recommendation for compensation. A minority report was issued by five dissenting members.

I, and the more than 300 Argosy investors who approached this Office are deeply disappointed with this result.

UNRESOLVED ISSUES

OFFICE OF THE PUBLIC TRUSTEE

In last year's Annual Report, I commented on the lack of cooperation by the Office of the Public Trustee in its dealings with my Office. My concern was not with the merits of the complaints made against the Public Trustee, but with the lack of cooperation. I indicated that if the matter could not be resolved through negotiation with the Public Trustee, I would be forced to resort to the Courts.

In response to my concerns, the Standing Committee on the Ombudsman invited the Public Trustee to attend before it to discuss the issues raised by me. At the request of the Standing Committee, my Office prepared a summary of 18 complaints outlining details of specific difficulties encountered by my staff in dealing with the Office of the Public Trustee. There were three arguments raised by the Public Trustee to explain his reluctance to provide my Office with access to his files: the statutory duty of confidentiality of the Public Trustee regarding all information and documents in his possession; the duty of confidentiality arising from a solicitor and client relationship to certain patients; and the fact that the Public Trustee felt that I was acting outside my jurisdiction by investigating cases where the Public Trustee acted pursuant to a court appointment.

On December 18, 1986, the Standing Committee, in its 15th Report, commented on the issue of the Public Trustee. The following recommendations were made: (1) that the Ombudsman and the Public Trustee set out in a formal agreement the proper jurisdictional sphere of Ombudsman investigations of complaints; (2) the Office of the Attorney General assist the Ombudsman and Public Trustee in reaching this agreement; and (3) that the **Ombudsman Act** be amended in the present session of the Legislature, or as soon as possible thereafter, to provide for an override of the confidentiality provisions of the **Public Trustee Act** and any other rule under which the Public Trustee claims confidentiality.

Although I have met with members of the Office of the Attorney General to discuss the implementation of the recommendations of the Standing Committee, no formal agreement has yet been reached. The relationship between the two Offices continues to present difficulties. There are four recommendation denied cases involving the Public Trustee which are outlined in Volume II of this report.

In three of these cases the Public Trustee has taken the extraordinary course of applying to the surrogate court for the passing of his accounts. In one case the Public Trustee's committee ended ten years ago. Use of this legal procedure is cause for considerable concern because it affects my process and because it is likely to have serious consequences for the complainants, who are now faced with a court action.

Although I am not disputing the Public Trustee's legal right to have his accounts passed I consider his exercise of that right at this stage grossly unfair to complainants and an attempt to deny them the outcome of my favourable recommendations. Furthermore, the effect will be a duplication of effort. Again, without in any manner disputing the jurisdiction of the surrogate court, I consider the three complaints are properly before me as Ombudsman and in due course will be properly before the Standing Committee for consideration as recommendation denied cases.

If the court proceeds to hear the cases the complainants will be seriously disadvantaged as none of them have the resources or expertise to present their arguments; all will require legal representation. Furthermore, I have no standing before the Court and will have no opportunity to ensure that the issues I consider important are brought to the attention of the Court. Proceeding to the surrogate court at this time appears to be an effective blocking mechanism.

At the time of publication of this report, I have written to the Public Trustee to request that he not proceed with the passing of accounts but that he allow my process to be completed. It is my sincere hope that he will accept my argument and that these particular problems will be resolved.

ONTARIO LABOUR RELATIONS BOARD LITIGATION

In 1985, the Ontario Labour Relations Board rejected the Ombudsman's authority to investigate the merits of its decisions. The Board argued this was improper and outside the Ombudsman's statutory authority. The Ombudsman's Office has investigated decisions of the Labour Board since the Office was created, some 12 years ago. The Ombudsman felt very strongly about the position being taken by the Labour Board because it not only affected Labour Board complaints but also complaints against all quasi-judicial tribunals such as the Ontario Municipal Board, the Commercial Registration Appeal Tribunal, the Criminal Injuries Compensation Board, the Social Assistance Review Board, and the Workers' Compensation Board.

I believed that this matter had been resolved by the Ontario Court of Appeal in 1979 when the Court concluded that the Ombudsman had jurisdiction over the Health Disciplines Board which is also a quasi-judicial tribunal.

In September, 1985 the Divisional Court unanimously concluded that the Ombudsman did have jurisdiction over the Labour Relations Board. The Board did not accept this position and appealed the decision to the Ontario High Court.

On January 7, 1987, the Ontario Court of Appeal released a unanimous decision, strongly supporting the Ombudsman's right to investigate the merits of the Labour Board's decisions as well as the decisions of all other Ontario quasi-judicial tribunals. The Labour Board has requested leave to appeal this decision to the Supreme Court of Canada and we await the Court's ruling. As a result of these appeal procedures our 24 files with the Labour Board have been held in abeyance pending the Supreme Court's decision.

EXPANDED JURISDICTION

In 1985 I suggested that it was time to examine the Ontario Ombudsman's jurisdiction. The Ombudsman's jurisdiction has remained fixed since 1975.

I made the suggestion that the Standing Committee consider whether the Ombudsman should have his jurisdiction expanded. The Standing Committee on the Ombudsman requested a position paper on this issue from the Ombudsman.

In September of 1986, I tabled my position paper with the Committee. The paper suggested that the Committee consider three possible areas to be added to our jurisdiction: the Ontario New Home Warranty Plan, Children's Aid Societies, and Public Hospitals.

The paper also recommended that the Committee conduct public hearings to involve any agencies that may wish to participate in discussions on possible expanded jurisdiction. It is hoped that the Standing Committee will discuss this policy paper in the near future.

ARTICLING STUDENT PROGRAM

The Office of the Ontario Ombudsman has, since its inception, retained the services of articulated students-at-law. Currently the Office employs five articling students under the supervision of the Ombudsman's General Counsel. The students are involved in all aspects of the Ombudsman's responsibilities including investigation of complaints, interviewing members of the public, and carrying out the traditional legal responsibilities of students-at-law.

Of particular note is the fact that for several years our articling students have been participating in a program with the Supreme Court of Ontario where they are placed with a Supreme Court Justice for approximately two weeks. During this time, the students observe the court procedures and may assist the Justices in clerking functions.

THE ANNOTATED OMBUDSMAN ACT

The Ontario Ombudsman's office is involved in an interprovincial Ombudsman project to annotate the **Ombudsman Act**. The Ombudsman Acts of the nine Canadian provinces that have Ombudsmen are quite similar. Many of the Offices including the Ontario Office are participating in preparing an annotation of the **Ombudsman Act** in an attempt to create a useful guide for all Ombudsmen in Canada.

FRENCH LANGUAGE SERVICES

In response to new provincial legislation, the **French Language Services Act, 1986**, the Office established a committee to plan the implementation process. Each section of the Office is represented on this Committee to determine how best to meet the requirements of the Act in providing services to the public in both official languages.

We have already instituted a bilingual policy for print materials. The Annual Report, pamphlets and brochures are being printed in both official languages and French-content newsletters are printed for designated areas. We have also started a program of upgrading the abilities of staff who already have some fluency in French and plan to expand this program to other staff members.

Last year, one staff member was placed in the Montreal Office of the Quebec Ombudsman for a period of six weeks and I am hopeful more such placements can be arranged in the future.

PARTICIPATION IN THE NATIONAL AND INTERNATIONAL OMBUDSMAN COMMUNITY

This Office, since its inception, has maintained a vigorous involvement in the national and international Ombudsman community. This has included membership in the International Ombudsman Institute, a vehicle to promote the concept of Ombudsman. Located in Edmonton, Alberta, the Institute has become a resource centre by obtaining and distributing Ombudsman information. Also, on the international scene, a conference is held every four years, the next being scheduled for 1988 in Australia. This important educational event brings together Ombudsmen from around the globe.

On the national scene, an annual conference is held by the Canadian Ombudsman Association, attended by the provincial Ombudsmen and those federal officials who serve an ombudsman-type function.

Statistical Information

Statistical Information

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION FISCAL YEAR 1986/87 WITH COMPARATIVE NUMBERS

ORGANIZATION COMPLAINED AGAINST	WITHIN JURISDICTION		OUTSIDE JURISDICTION		INFORMATION REQUESTS		TOTAL	
	1986-87	1985-86	1986-87	1985-86	1986-87	1985-86	1986-87	1985-86
AGRICULTURE & FOOD	27	11	29	17	10	1	66	29
ATTORNEY GENERAL	42	22	77	65	37	37	156	124
Ontario Municipal Board	26	23	35	22	9	6	70	51
Public Trustee	22	22	15	9	15	8	52	39
TOTAL ATTORNEY GENERAL	90	67	127	96	61	51	278	214
COLLEGES & UNIVERSITIES	24	44	109	95	17	20	150	159
COMMUNITY & SOCIAL SERVICES	139	178	304	183	64	62	507	423
Social Assistance Review Board	36	50	33	29	6	3	75	82
TOTAL COMMUNITY & SOCIAL SERVICES	175	228	337	212	70	65	582	505
CONSUMER & COMMERCIAL RELATIONS	84	60	111	73	45	69	240	202
CORRECTIONAL SERVICES	145	68	59	18	16	25	220	111
Correctional Centres	891	806	71	61	14	49	976	916
Detention Centres	1759	1665	104	53	34	42	1897	1760
Jails	1568	1160	70	24	33	37	1671	1221
TOTAL CORRECTIONAL SERVICES	4363	3699	304	156	97	153	4764	4008
CITIZENSHIP & CULTURE	3	6	8	5	4	4	15	15
EDUCATION	39	16	30	30	5	12	74	58
ENERGY	0	2	2	4	2	0	4	6
Ontario Hydro	16	27	42	33	14	9	72	69
TOTAL ENERGY	16	29	44	37	16	9	76	75
ENVIRONMENT	11	25	47	13	11	9	69	47
FINANCIAL INSTITUTIONS	27	7	31	11	17	6	75	24
GOVERNMENT SERVICES	18	22	23	11	15	18	56	51
HEALTH	45	48	88	51	14	59	147	158
Psychiatric Hospitals	183	122	43	17	18	30	244	169
O.H.I.P.	17	21	68	35	19	18	104	74
TOTAL HEALTH	245	191	199	103	51	107	495	401
HOUSING	70	56	162	104	85	84	317	244
Ontario Housing Corp.	6	12	26	29	8	18	40	59
TOTAL HOUSING	76	68	188	133	93	102	357	303
INDUSTRY, TRADE & TECHNOLOGY	2	2	4	3	3	4	9	9
INTERGOVERNMENTAL AFFAIRS	0	0	0	0	0	0	0	0
LABOUR	70	58	91	38	55	31	216	127
Human Rights Commission	48	29	51	41	24	16	123	86
Worker's Compensation Board	352	419	687	726	539	609	1578	1754
TOTAL LABOUR	470	506	829	805	618	656	1917	1967
MUNICIPAL AFFAIRS	16	29	19	16	2	11	37	56
NATURAL RESOURCES	48	54	50	33	10	16	108	103
NORTHERN DEVELOPMENT & MINES (Northern Affairs)	2	4	5	0	4	0	11	4
REVENUE	40	29	66	40	15	18	121	87
SKILLS DEVELOPMENT	5	1	12	10	2	3	19	14
SOLICITOR GENERAL	25	40	86	56	23	16	134	112
TOURISM & RECREATION	12	13	14	10	5	9	31	32
TRANSPORTATION & COMMUNICATIONS	49	69	168	105	35	37	252	211
TREASURY & ECONOMICS	26	12	14	9	10	5	50	26
ONTARIO GOVERNMENT OTHER	2	3	27	25	156	233	185	261
ONTARIO GOVERNMENT TOTAL	5895	5235	2881	2104	1395	1634	10171	8973
COURTS	0	0	336	294	46	55	382	349
FEDERAL	0	0	947	672	188	191	1135	863
PRIVATE	0	0	3196	2395	691	542	3887	2937
MUNICIPAL	0	0	959	723	96	74	1055	797
INTERNATIONAL	0	0	7	8	3	2	10	10
OTHER PROVINCES	0	0	46	28	25	12	71	40
NO ORGANIZATION SPECIFIED	0	0	52	42	561	199	613	241
TOTAL	5895	5235	8424	6266	3005	2709	17324	14210

Statistical Information

DISPOSITION OF JURISDICTIONAL COMPLAINTS FOR FISCAL YEAR 19

ORGANIZATION COMPLAINED AGAINST	COMPLAINT SUPPORTED NO FORMAL RECOMMENDATION						COMPLAINANT ASSISTED		INDEPENDENTLY RESOLVED		UNSUBSTANTIATED
	1986-87	1985-86	1986-87	1985-86	1986-87	1985-86	1986-87	1985-86	1986-87	1985-86	1986-87
AGRICULTURE & FOOD	0	0	1	0	3	0	3	0	1	0	10
ATTORNEY GENERAL			4	1			6	4	3	1	9
Ontario Municipal Board			2				5				11
Public Trustee		1		2	4	1	5	1		1	3
TOTAL ATTORNEY GENERAL	0	1	6	3	4	1	16	5	3	2	23
COLLEGES & UNIVERSITIES	0	0	0	0	0	1	8	5	1	3	2
COMMUNITY & SOCIAL SERVICES	1	2	2	5			19	29	8	11	20
Social Assistance Review Board			2	1	4		6	6	1		14
TOTAL COMMUNITY & SOCIAL SERVICES	1	2	4	6	4	0	25	35	9	11	34
CONSUMER & COMMERCIAL RELATIONS	0	0	1	0	*1	0	14	10	0	2	13
CORRECTIONAL SERVICES				1			8	1	16	3	1
Correctional Centres			4	1			65	48	49	45	3
Detention Centres	1				2	0	133	92	82	78	5
Jails							88	50	78	55	6
TOTAL CORRECTIONAL SERVICES	1	0	4	2	2	0	294	191	225	181	15
CITIZENSHIP & CULTURE	0	0	0	0	0	0	0	2	0	0	1
EDUCATION	1	0	0	2	9	0	3	0	0	0	15
ENERGY											
Ontario Hydro	0	1					7	5		2	2
TOTAL ENERGY	0	1	0	0	0	0	7	5	0	2	2
ENVIRONMENT	0	1	0	0	0	0	5	2	0	0	2
FINANCIAL INSTITUTIONS	0	0	0	0	*4	0	3	1	0	1	6
GOVERNMENT SERVICES	0	0	0	0	0	0	8	1	0	1	5
HEALTH	0	0	7	0	2	1	4	3	1	0	13
Psychiatric Hospitals	0	1					5	9	12	9	4
O.H.I.P.	1	0	0	3	1	0	2	8	1	0	4
TOTAL HEALTH	1	1	7	3	3	1	11	20	14	9	21
HOUSING				1			23	11	4	0	4
Ontario Housing Corp.							3	3			
TOTAL HOUSING	0	0	0	1	0	0	26	14	4	0	4
INDUSTRY, TRADE & TECHNOLOGY	0	0	0	0	0	0	0	1	0	0	0
INTERGOVERNMENTAL AFFAIRS	0	0	0	0	0	0	0	0	0	0	0
LABOUR	0	0	0	0	0	0	11	9	4	2	10
Human Rights Commission	3						1	2			19
Worker's Compensation Board	1	0	74	10	16	2	55	29	5	6	97
TOTAL LABOUR	4	1	74	10	16	2	67	40	9	8	126
MUNICIPAL AFFAIRS	0	0	0	0	0	0	3	2	0	1	1
NATURAL RESOURCES	1	0	1	0	0	0	16	7	1	2	1
NORTHERN DEVELOPMENT & MINES	0	0	0	0	0	1	1	1	1	0	0
REVENUE	0	0	2	1	0	0	6	8	0	2	7
SKILLS DEVELOPMENT	0	0	0	0	0	0	2	1	0	0	1
SOLICITOR GENERAL	0	0	0	0	0	0	4	1	1	3	1
TOURISM & RECREATION	0	0	0	0	0	0	5	1	0	0	3
TRANSPORTATION & COMMUNICATIONS	0	1	0	0	0	0	15	11	1	3	5
TREASURY & ECONOMICS	0	0	2	0	0	0	6	6	0	0	2
ONTARIO GOVERNMENT OTHER	0	0	0	0	0	0	0	0	0	0	0
ONTARIO GOVERNMENT TOTAL	9	8	102	28	46	6	548	370	270	231	300

37 WITH COMPARATIVE NUMBERS

INVESTIGATION DISCONTINUED ABANDONED WITHDRAWN SECTION 18						TOTAL	
1985-86	1986-87	1985-86	1986-87	1985-86	1986-87	1985-86	1986-87
2	2	3	2	4	2	27	11
1	1	14	4	5	8	42	22
		1	4	7	12	26	23
1	4	3	4	7	2	23	22
2	5	18	12	19	22	91	67
2	4	6	6	5	11	24	44
13	27	41	51	35	22	139	178
1	8	1	5	7	5	36	50
14	35	42	56	42	27	175	228
5	6	13	12	37	9	84	60
42	26	48	13	30	13	145	59
99	235	311	255	260	219	891	806
58	516	517	419	561	554	1759	1663
31	446	308	338	656	281	1568	1171
32	1223	1184	1025	1507	1067	4363	3699
0	0	2	2	0	0	3	6
1	0	4	4	6	6	39	16
		3	6	4	3	16	27
0	0	3	6	4	3	16	29
0	1	1	7	3	4	11	25
1	0	3	0	11	0	28	7
0	1	1	10	4	2	18	22
2	2	7	6	9	15	45	48
29	28	60	41	73	33	183	122
1	1	1	2	6	3	17	21
32	31	68	49	88	51	245	191
6	2	18	26	15	11	70	56
	3	2	4	1	0	6	12
6	5	20	30	16	11	76	68
0	0	1	1	1	0	2	2
0	0	0	0	0	0	0	0
0	3	18	10	27	20	70	58
1	6	9	5	15	9	48	29
3	15	24	48	77	92	352	419
4	24	51	63	119	121	470	506
3	1	6	14	3	3	16	29
3	10	22	21	3	5	48	54
0	0	0	1	0	0	2	4
1	3	11	6	13	4	40	29
1	0	0	0	1	0	5	1
1	5	5	5	13	12	25	40
1	1	2	2	1	2	12	13
4	8	14	14	10	15	49	69
0	0	4	2	12	2	26	12
0	0	0	0	2	3	2	3
14	1365	1484	1350	1924	1382	5897	5235

GLOSSARY

COMPLAINT SUPPORTED

NO RECOMMENDATION — At times the Ombudsman will support a complaint but decide no recommendation is appropriate given all the circumstances.

FORMAL RECOMMENDATION ACCEPTED — Those complaints where the governmental organization agrees to implement the Ombudsman's recommendation.

FORMAL RECOMMENDATION DENIED — Those complaints where the governmental organization refuses to implement the Ombudsman's recommendation. The discrepancy between the total number (46) and the fact that only 25 case summaries are presented in our Volume II is explained as follows: many cases are resolved between the end of our fiscal year (when our statistics are compiled) and the publication date of our report.

COMPLAINANT ASSISTED — Those complaints where the Ombudsman renders assistance and usually involve tangible corrective action taken by the governmental organization.

INDEPENDENTLY RESOLVED — Many complaints are resolved independent of the Ombudsman's involvement. This can occur at any point in the investigative process prior to the Ombudsman issuing a final report.

UNSUBSTANTIATED — Those complaints where the Ombudsman's investigation reveals no grounds to support the complainant's contention.

INVESTIGATION DISCONTINUED — The Ombudsman uses his discretion to discontinue an investigation at any point prior to issuing a final report for a number of reasons:

ABANDONED — Attempts to communicate with the complainant are unsuccessful (eg., complaints from inmates of correctional facilities who are released in the course of our investigation and leave no forwarding address).

WITHDRAWN — At the request of the complainant. In many cases information is provided to the complainant and, although there is no resolution the complainant does not wish us to pursue the matter.

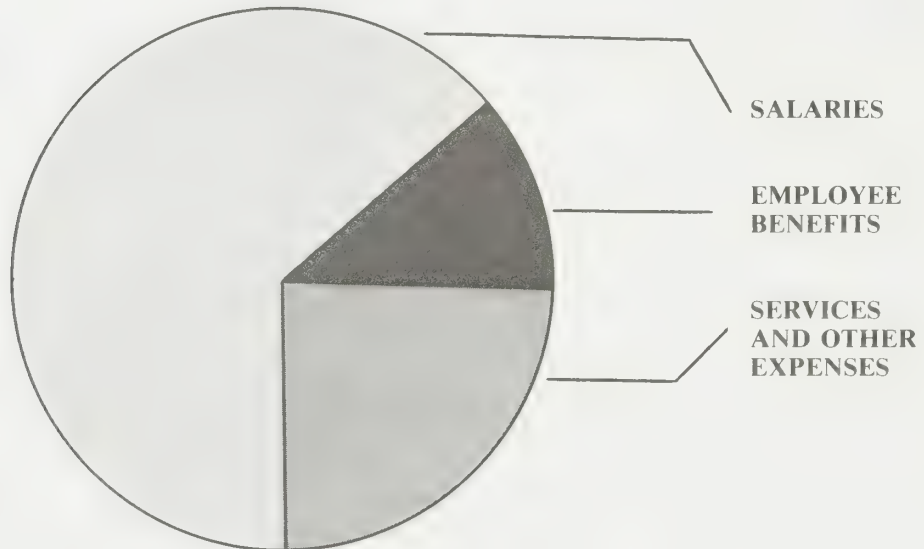
SECTION 18 — Refers to Section 18 of the **Ombudsman Act** which allows the Ombudsman the discretion to discontinue the investigation if, for example, there is an adequate alternative remedy or the complaint is frivolous or having regard to all the circumstances no further investigation is necessary.

*The 1 complaint against the Ministry of Consumer and Commercial Relations and the 4 against the Ministry of Financial Institutions were the complaints made by some 300 people and the subject of the very large Argosy investigation. My final report on the Argosy investigation has been reviewed by the Standing Committee (see page 10).

Statistical Information

DISPOSITION OF NON-JURISDICTIONAL COMPLAINTS, INFORMATION REQUESTS/SUBMISSIONS FISCAL YEAR 1986/87, WITH COMPARATIVE NUMBERS

Organization	Information Provided		Inquiries Made		No Action Possible		Total		Percent	
	1986-87	1985-86	1986-87	1985-86	1986-87	1985-86	1986-87	1985-86	1986-87	1985-86
Provincial	2803	2784	1329	799	144	155	4276	3738	37.4	41.7
Federal	945	783	176	54	14	26	1135	863	9.9	9.6
Municipal	844	735	195	48	16	14	1055	797	9.2	8.9
Private	3524	2821	306	78	57	38	3887	2937	34.0	32.7
Courts & Judges	353	322	17	8	12	19	382	349	3.4	3.9
Other Provinces	57	36	13	0	1	4	71	40	0.6	00.4
No Organization Specified	532	192	33	6	48	43	613	241	5.4	2.7
International	9	10	0	0	1	0	10	10	0.1	.1
TOTAL	9067	7683	2069	993	293	299	11429	8975	100.0	100.0



ACTUAL EXPENDITURES FOR THE FISCAL YEAR 1986-87

Salaries	\$4,250,010	Other Services	\$146,612
Employee Benefits	657,474	Furniture & Office Equipment	24,742
Travel & Relocation	156,969	Data Processing Equipment	104,744
Telephone, Mailing & Delivery	154,806	Office Supplies & Devices	63,317
Building Rent	594,456	Books & Publications	84,496
Equipment & Other Rentals	144,870	Other Supplies & Equipment	72,702
Professional Services	70,392		

TOTAL \$6,525,590

Case Summaries

INTAKE & INFORMATION

The Ombudsman tries to help even if the problem is non-jurisdictional. In the following case, financial assistance was obtained for the mother of a young child so that the mother could continue her education.

SUMMARY NO. 1

The complainants needed financial assistance for daycare for their toddler, since their income was considerably less than when the family received welfare benefits while the husband was unemployed. Although the family had passed the means test for home daycare, they were placed on a waiting list because of a freeze on these services. The grandmother was taking care of the child while the mother attended a college course in which she had recently enrolled. The grandmother was scheduled to leave in two weeks and the mother was in a state of panic when she called our Office. She feared she would have to terminate her course of study, which had been made possible through the Ontario Student Assistance Program, if she could not get financial assistance for daycare.

Our research included numerous telephone contacts with charitable organizations in the local area. It was most rewarding to learn that the local Lions Club would provide financial assistance to the complainant until the end of July 1987. Their daughter will be eligible for placement in a daycare centre in August 1987 when she turns two.

JUSTICE & LICENSING

Policy changes by governmental agencies often follow the successful resolution of an individual complaint. In the following case, the Teachers' Superannuation Commission revised its policy for the purchase of pension credits for foreign service.

SUMMARY NO. 2

This complaint concerned a teacher who, during a leave of absence from his school board for the 1980-81 school year, taught in the People's Republic of China. On returning to Ontario, he requested of the Teachers' Superannuation Commission that he be permitted to purchase credit in the Teachers'

Superannuation Fund for that year of service, pursuant to the plan's foreign service provision. This request was denied, and on the basis that the service had not been performed under the auspices of the Ontario Teachers' Federation so that the Teachers' Superannuation Commission could not determine whether it was similar to service in Ontario. In this instance, the teacher had arranged his year of teaching in China with the assistance of the Chinese Embassy. The Ontario Teachers' Federation was willing to certify that the service he performed was virtually identical to that performed in one of its placements and had noted that it was not the Federation's intention that its sponsorship status be exclusive.

The Ombudsman issued his report on this case in May of 1986, concluding that the Commission's decision to deny this teacher's application for foreign service credit was unreasonable, and recommending that it now accept his application. After meeting to consider the Ombudsman's report, the Commission decided to permit our complainant to purchase pension credit for his service in China.

Subsequently, we learned that the Commission has revised its foreign service approval policy for such applications that fall within its jurisdiction. Now, the Commission will consider applications respecting service in any country outside of Canada, provided that the applicant was a qualified teacher in the jurisdiction in which the service was rendered.

In the following example, the Ombudsman's involvement ensured that administrative policies were applied uniformly by a government agency.

SUMMARY NO. 3

The complainant, who lives 255 km from Toronto, was invited for a job interview in a government office to be held at 9 a.m. The complainant was not told anything about travel expenses when she was invited for the interview. Unable to use alternative public transportation, the complainant drove her own car to attend the interview.

When the complainant submitted her expense claims for \$195.50 (\$170.50 mileage plus \$25.00 for meals), the office refused to reimburse her, arguing that no prior arrangement had been made with regard to travel expenses.

In response to the Ombudsman's letter of intent to investigate, the government agency offered to pay \$33.50, which was the cost of the most economical means of transportation. During the investigation policies regarding travel expenses as detailed in the Ontario Manual of Administration were thoroughly discussed and the government agency agreed to pay the total claim of \$195.50.

Investigations can be reopened if new information comes to the Ombudsman's attention.

SUMMARY NO. 4

In 1970 approximately 2,000 property assessment officers had their employment transferred from various municipalities to the province. In the transfer process these people were faced with a choice between taking refunds from their pre-existing pension plans, transferring from those plans to the Public Service Superannuation Fund, or leaving the funds in the old plans, for payment in the form of an annuity upon reaching age 65. Approximately 250 of the assessment officers complained to this Office, contending that the manner in which their pensions were dealt with was unfair in that they had been promised that the transfer of employment would have no deleterious effect on their pensions. It is the opinion of these officers that the transfer of employment did have a harmful effect on their pensions.

In 1978, The Ombudsman's Office investigated this complaint and determined that there were no grounds for support. In 1985, the current Ombudsman reopened the investigation based on new information.

LAND USE, RESOURCES AND REVENUE

Mediation and conciliation are effective means of resolving complaints. In the following case the Ombudsman proposed a solution that was acceptable to all parties involved.

SUMMARY NO. 5

A group of residents living in a subdivision near Sault Ste. Marie, Ontario, complained that the road, sewage and water systems which serviced the subdivision had not been completed by the developer to a satisfactory standard.

Although the Ministry of Municipal Affairs and the Ministry of Environment had made some efforts to resolve the problems, the situation had become complicated by the developer's bankruptcy.

After an investigation was conducted, a meeting was arranged between officials from the two Ministries and the Ombudsman's Office to discuss possible solutions. The Ombudsman proposed that both Ministries complete certain work on the subdivision and the Ministries accepted that proposal.

The balance of the work, including obtaining title to the property occupied by the sewage system from the developer's trustee-in-bankruptcy, replacing the tile bed, and paving the road was completed during the summer and fall of 1986.

Once these problems were resolved, the residents began the formation of a Local Services Board and a Local Roads Board so that permanent mechanisms would be established to deal with services and future maintenance and repair of the road.

The investigation of an individual complaint can result in policy changes for the benefit of many others. In the following case, the Ombudsman's investigation resulted in the Ontario Housing Corporation's development of a policy that the victims of domestic violence be given special consideration when applying for subsidized housing.

SUMMARY NO. 6

Our complainant, a woman with two young children, had been physically abused by her husband numerous times. She had attempted to leave him, but was unable to do so as there was no room available for her and her children at the local women's hostels. She had also attempted to apply for subsidized housing with the Metro Toronto Housing Authority, but was advised that she could not submit an application while she continued to reside with her husband.

The abuse continued and she and the children eventually left the family home to reside in a women's shelter. She immediately applied for housing with MTHA but did not receive a home visit until three months later and was not given an offer of accommodation for another three months.

After investigating this matter, the Ombudsman wrote to the Housing Authority and to the Ontario Housing Corporation advising that he was considering three possible recommendations. The first was that a woman living in an abusive situation should be able to apply directly for subsidized housing without first having to leave that situation. The second and third recommendations stated that those who were victims of violence should be given priority in receiving home visits and, similarly, should have some priority in receiving offers of accommodation.

In response to the Ombudsman's letter, the Ontario Housing Corporation informed us that it was implementing a new policy whereby a uniform approach would be established to determine eligibility and to process applications from victims of domestic violence. Eligibility is now extended to battered women still living with their spouses. Once the battering situation has been verified by someone working with the woman in a professional capacity, and once the woman has confirmed her intention to separate from her spouse, special priority is assigned to her application for housing, and the first available and suitable unit is then offered to her. Our Office is very pleased to have been a part of the review which has led to these important changes in policy so that persons in potentially threatening situations may receive special consideration in applying for housing.

Difficulties experienced by the disabled are of special concern to the Ombudsman. In the following case the Ombudsman's involvement enabled the spouse of a physically handicapped person to obtain a refund of retail sales tax on a vehicle used for transportation.

SUMMARY NO. 7

In August of 1983, the complainant purchased a new vehicle, paying \$548.80 in retail sales tax. He felt that the vehicle qualified for a tax rebate under a program offered by the Ministry of Revenue which provides a refund of retail sales tax on vehicles used for the transportation of the physically handicapped. His wife, confined to bed for most of the day, had suffered a stroke in 1974 and, in view of her disability and the vehicle's disability licence plate and parking permit, he felt that the Ministry should allow his application for a retail sales tax rebate.

In rejecting the application, the Ministry noted that two categories of individuals are entitled to retail sales tax rebates under the regulations governing this program; a person with a permanent physical handicap, or a person permanently and seriously restricted. The Ministry decided that although the complainant's wife did not meet the definition of a "person with a permanent physical handicap", she did qualify as "permanently and seriously restricted" in personal mobility. The relevant regulation provides for a rebate to a family member of the person with a permanent physical handicap but does not provide a rebate to a family member of a person whose personal mobility is permanently and seriously restricted.

After receiving notification of our intention to investigate, the Ministry of Revenue acknowledged that the vehicle could have been registered in the complainant's wife's name, in which case the rebate would have been granted. The Ministry agreed to a rebate to the complainant of his retail sales tax payment of \$548.80. In addition, the Ministry indicated that the regulations in question were being reviewed in conjunction with the Secretariat for Disabled Persons, to better serve disabled persons and their families.

Governmental organizations often change their decisions when additional relevant information is provided. In the following case, the Ombudsman provided information that convinced the Ministry of Natural Resources to protect the cabins and timber resources of a remote Native Band.

SUMMARY NO. 8

The Chief and Councillors of a remote northern reserve complained to the Ombudsman about the Ministry of Natural Resources' fire-fighting policy north of the 50th parallel.

The Chief was of the view that the Ministry did not assign any value to the resources in the vicinity of the reserve and would only fight those forest fires which were threatening the community itself. The Chief was dissatisfied with this policy and pointed out that his trap line had been burned two years earlier. As a result, he was not able to take his annual quota of furs.

He also pointed out that trappers' and hunters' cabins were not protected in the event of fire and that their loss could pose a serious financial setback to the owners. Finally, he expressed the wish that more members of the community be trained in fire-fighting and, that fire-fighting equipment be placed on the reserve.

A review of this matter by our Office revealed that Ministry policy dictates that forest fires in the far north will be fought only if it can be done on a cost-efficient basis. The Ministry felt that it could not justify spending amounts of approximately \$25,000 per day in order to protect what it believed were relatively worthless timber stands. However, when it learned that the Band was concerned about protecting its cabins and a particular timber stand which it hopes to utilize when a sawmill is built, the Ministry indicated that it would be willing to undertake to protect these resources in the event of fire.

With respect to the concern about fire-fighting training and the stationing of fire-fighting equipment on the reserve, the Ministry undertook to provide more fire-fighting training to communities in that area and to review its fire-fighting policy north of the 50th parallel. It is hoped that this review would be completed by the summer of 1987.

The Band accordingly notified our Office that it would await the outcome of this review. It also indicated that it was satisfied that the Ministry had undertaken to protect the cabins and timber stands which, in the Band's opinion, constituted valuable assets.

Often complaints are resolved when the governmental organization agrees to review the complainant's file. In the following case the Ombudsman assisted a single mother with two children to obtain a transfer to accommodation closer to her school from the local Housing Authority.

SUMMARY NO. 9

The complainant was a single mother with two children who applied for a housing transfer so she could live closer to the college she planned to attend the following year. Although she presented the local Housing Authority with a letter from the Office Manager of the College confirming that she had submitted an application, the Housing Authority denied her transfer request.

The Housing Authority's procedures required that a tenant be enrolled in a course before a transfer request could be considered. This procedure was followed to ensure that all such requests were current and valid.

It was not until the complainant was actually attending classes that her transfer request was approved. She was then placed on a long waiting list and after a year at school she had not received a transfer to suitable housing.

The complainant advised us that she was trying to become self-supporting by taking a very difficult course and she was required to take a full course complement in order to qualify for subsidized daycare. As a result of the long hours of travel (1-1/2 to 2 hours each way) and the demands of caring for her family, she said she had to drop one course. She felt that the Housing Authority could have prevented her difficult situation had it approved her original transfer request. She complained that the Authority's procedure requiring a tenant to be enrolled in a course before approving a transfer was unreasonable.

In the course of our investigation, the Housing Authority agreed to review the complainant's file. As a result of that review, the Housing Authority agreed to consider her for upcoming vacancies on a priority basis. We were also advised that the Authority was undertaking a complete review of its transfer policies.

The Ombudsman will support a complaint when the government decision was based on a mistake of fact. In the following case the Ombudsman helped the complainant recover more than \$9,000 in taxes as a result of an erroneous property assessment.

SUMMARY NO. 10

The complainant alleged that the Ministry of Revenue had, through its errors in assessing property owned by his company, caused the company a financial loss.

The investigation revealed that the building was first assessed in 1977, shortly after construction. When the complainant purchased it in November of 1979, the offer to purchase was based on projected income and expenses, including property taxes for which an annual average increase of 8% was allowed. Two years after the purchase, the Ministry reinspected the property and found that approximately 2,500 square feet of space had not been assessed.

When this was corrected, the assessment increased by more than \$30,000. The complainant alleged that as a result of the Ministry's error, his company had suffered financially due to the unanticipated increase in property taxes. The Ministry of Revenue did not dispute that the error had been made, but since it was obliged to correct the error in order to ensure the fairness of the assessment, it felt it ought not to have to compensate the complainant.

While in the purchase and operation of an income generating property there are certain inherent risks, the Ombudsman felt that prospective purchasers should not reasonably be expected to accept, as a valid business risk, errors made by the Ministry of Revenue in assessing property. The complainant had relied on the assessment as being correct and projected property taxes on that basis. When the assessment increased as a result of the Ministry's correction of its error, the property taxes increased accordingly, causing an unanticipated increase in the operating expenses of the building. Depending on revenues and other costs, this would have either increased the loss or reduced the profit. On this basis, the Ombudsman reached a possible conclusion that the Ministry of Revenue's assessment was based on a mistake of fact and tentatively recommended that the Ministry provide appropriate compensation. The Ministry disagreed with this position, pointing out that no member of its staff had represented to the complainant that his property assessment would remain unchanged. It also stated that the inaccuracies of the projected tax liability were attributable to the complainant's own incorrect assumptions concerning the application of **Assessment Act**, since the possibility of increased assessment is implicit in the Act.

It was felt, however, that if there was an incorrect assumption on the complainant's part, it was that the assessment was correct. Also, the complainant's assumption that the two year old assessment was correct and equitable was not unreasonable, since property owners must be able to rely on property assessments as being correct and having some meaning in relation to property taxes. Since the assessment increases which occurred were not found to be reasonably acceptable risks and were the result of corrective measures taken by the Ministry to rectify its previous errors, a final conclusion was made that the Ministry's assessment was based on a mistake of fact and a final recommendation was made that the Ministry pay compensation for the effects of its errors.

In response to the final recommendation, the Ministry of Revenue obtained from the municipality detailed information as to the amount of the taxes in question and issued to the complainant a cheque for more than \$9,000.

LABOUR AND PSYCHIATRIC INSTITUTIONS

For decisions to be seen as fair, all relevant information must be considered. In the following case, the Workers' Compensation Board accepted the Ombudsman's recommendation that an ongoing supplement and arrears be paid an injured worker who had suffered a reduction in wages because of a compensable injury, on the basis of available information not considered by the Board.

SUMMARY NO. 11

In February, 1981, an upholsterer twisted his right arm and struck his elbow, incurring an injury requiring time off work. He returned to work half days in April and began receiving temporary partial disability benefits. In June, 1981, his orthopaedic specialist notified the Board that, because of the compensable injury, the worker's piecework production was low and consequently he was suffering a wage loss. When the employer disagreed, taking the position that earnings were reduced because economic conditions dictated a decrease in the number of hours worked, benefits were discontinued, except for a 5% pension. The worker objected, claiming that his hours of work had been cut back because of business slowdown, but that when at work his production was low because of his injury. He felt that he should be given entitlement to a supplement to make up his wage loss.

The employer provided the Board with a breakdown by week of the hours worked, gross wages and time off. Although Board staff did not analyze the figures, the Appeal Board decided that there was no evidence to substantiate a wage loss, and that the 5% pension was adequate recognition of the worker's decreased ability.

After the worker complained to this Office, we looked at the employer's figures for the 12 months preceding the accident as a baseline against which other figures could be compared, and for two later years when the worker had returned to full-time employment. In order to exclude the effect of business slowdown, we examined the worker's average wage per hour rather than gross wages.

We found that his average wage per hour was \$8.95 before the accident and \$8.41 afterwards, \$8.93 with the 5% pension added. We contacted the employer and discovered that raises in pay negotiated in union agreements would have increased the worker's earnings per hour to \$10.54 and \$11.07 in the two later years, had he been able to work at his former rate. When we applied these rates to his hours worked, it showed that he earned about \$5,000 less in the two years than he would have earned had he not been injured.

We felt that the figures adequately demonstrated that the worker suffered a significant wage loss, not adequately compensated by the 5% pension, and recommended that the Board pay him a supplement.

After receiving the Ombudsman's recommendation, the Board reviewed the earnings figures, and paid the worker both an ongoing supplement and arrears for the five years he had suffered a reduction in wages because of his compensable injury.

In the following case the Ombudsman's recommendation, that the preponderance of medical evidence supporting the complaint be accepted over the opinion of a surgical consultant who did not examine the worker, was accepted by the Board.

SUMMARY NO. 12

The worker had been employed on an automobile assembly line for a number of years when he suffered a compensable right shoulder strain at work on April 14, 1980. He returned to work approximately one month later. In July, 1981, he began performing overhead work tightening bolts and developed arthralgia of his right shoulder, which the Board accepted as disablement arising out of and in the course of his employment. After being advised by his doctors that he was ready for modified work, the worker agreed to try a job which the company felt would be suitable. On May 13, 1983, after three days at work, he was not able to continue due to severe shoulder pain. After examination, his doctors stated that he was unable to perform even light duties.

In spite of the fact that the Board's rehabilitation counsellor viewed the job and expressed her opinion that different work might be less strenuous on the worker's shoulder, the surgical consultant at the Board stated that the worker was fit to do the job described.

On the basis of this opinion, the worker was denied entitlement to temporary total disability benefits after May 13, 1983.

Subsequent medical treatment improved the worker's condition so that, on November 21, 1983, he was able to return to active employment and to remain employed. Later, he was given a 5% permanent disability award for right rotator cuff tendinitis.

Both the family doctor and the specialist wrote to the Board stating that the worker had been unable to work from May to November, 1983 because of his right shoulder pain. In its decision of November 27, 1984, however, the Appeal Board accepted their surgical consultant's opinion that the worker had been fit to perform the work offered in May of 1983 and denied his claim. As well, the panel concluded that the worker had not made a sincere effort to find work and that the preponderance of medical evidence did not support a claim of total disability subsequent to May 13, 1983.

On reviewing the documentation, we found that the Board's surgical consultant had never examined the worker. The worker's own treating physicians were unanimous in the opinion that he had been totally disabled during the period in question while he had been receiving active treatment. It was our opinion, therefore, that the surgical consultant's assessment of the job and the worker's ability to perform it should not have prevailed over the opinions of the counsellor who viewed the work and of the treating physicians. It was also noted that the worker had contacted his company for a suitable job whenever his doctors had authorized his return to work. He had performed his job in May, 1983 for three days and part of a fourth before becoming disabled by his shoulder pain. His effort, therefore, did appear to have been adequate. On the basis of the evidence, it was concluded that the Appeal Board decision had been unreasonable and we issued a report recommending that the worker be awarded temporary total benefits from May 13 until November 21, 1983.

Upon reconsidering this case, the Board revoked the decision of the Appeal Board and accepted that the preponderance of external medical reporting supported total disability for the period claimed.

A psychological disability can often emerge after an accident in the workplace and render the worker completely disabled. In the following case, the Ombudsman persuaded the Board to grant the worker an attendance allowance for ongoing care in the home.

SUMMARY NO. 13

In February of 1967, a factory worker twisted her back while lifting a load of leather. Surgery was performed in May of that year.

Benefits were paid at various levels from February 1967 until August of 1969. At that time, a 30% permanent pension was granted in recognition of the ongoing physical disability. It was not until April 1973 that another 15% was granted, this in recognition of ongoing psychiatric problems. Over the years, the psychiatric and organic amounts were gradually increased until, in 1980, the worker received a 100% award: 40% psychiatric and 60% organic.

The worker approached the Ombudsman's office, seeking the backdating of her 100% pension to 1969, i.e., to the date her temporary benefits were terminated, and requesting entitlement to an attendance allowance. (Attendance allowances are granted to assist workers in receipt of 100% pension with respect to their ongoing care and needs in the home.)

During the course of the investigation, new medical opinions were sought from the worker's treating physicians and an independent assessment of the worker's in-home needs was conducted by the Victorian Order of Nurses. A member of our staff also interviewed the worker twice at great length, once at her home in the presence of her daughter and sister, both of whom had cared for the worker and her household for many years.

It was concluded on the basis of the medical evidence, all of which dated the emergence of a psychiatric disability from the accident onwards and none of which refuted that assertion, that the worker did not suffer a pre-existing psychiatric condition. Further, it was noted that all medical evidence attributed the majority of the worker's disability to psychiatric factors. It was recommended that the 100% award should be redistributed as follows: 30% for the physical disability and 70% for the psychiatric disability, and that the award should be backdated to August of 1969.

Our review of the worker's request for entitlement to an attendance allowance revealed that the worker did not fall within any one of the seven categories covered by the Workers' Compensation Board policy on attendance allowances. However, it was concluded that the policy was improperly discriminatory in two respects: 1) there was no mention of psychological disability in any of the seven categories of eligibility; 2) the policy failed to address what could be described as quality of life issues, i.e., shopping, food preparation, cleaning and care of the home environment, et cetera. Given the lack of restrictions prescribed in section 52 or the **Workers' Compensation Act**, it seemed that the policy should be amended to broaden the eligibility requirements.

It was suggested that, if the Board accepted redistribution of the 100% pension, so that more weight was given to the psychiatric component of her disability, then in considering the worker's entitlement to an attendance allowance the worker's perceptions of her abilities and restrictions would be taken into account as well as her physical abilities and restrictions. It was found that the worker believed herself to be totally disabled and incapable of caring for herself or her home, in sharp contrast to her singlehanded management of the household prior to the accident. Given that the worker's daughter and sister have since attended to all these matters, the worker would in fact be rendered helpless without their assistance.

Following the issuance of the final report, the Board accepted the Ombudsman's recommendation. In the result, a retroactive adjustment to the 100% pension was made effective August of 1969, and entitlement was granted to an attendance allowance effective July, 1985. The Board policy with respect to the payment of attendance allowances was referred to the Medical Services Division for review, based on our Office's findings.

Disablement arising out of and in the course of employment can be difficult to establish. In this case, the Ombudsman found that the worker's wrist disability was a direct result of a significant increase in production over a short period of time, which led to an unaccustomed strain.

SUMMARY NO. 14

In November of 1981, a worker began employment as a spray painter at a car assembly plant, painting approximately 70 cars per shift.

By the middle of December, the production line had increased to approximately 200 cars per shift and the worker began to experience pain in his right wrist. Tendinitis of the wrist was diagnosed which the worker hoped would resolve during the seasonal shutdown from December 22, 1981 to January 18, 1982. Unfortunately, when he returned to work, he found he could not continue with the job due to the pain in his wrist, and laid off work the following day.

The claim was initially allowed by the Workers' Compensation Board for a period of temporary total disability, but on appeal for continuing entitlement the allowance was overturned, the entire claim denied and an overpayment in excess of \$10,000 was created.

During our investigation, we notified the Board that it appeared the worker should have entitlement for right wrist disability, arising out of and in the course of his employment. We noted that there was a significant increase in the production line which would give rise to any unaccustomed strain and, therefore, quite reasonably to disablement arising out of and in the course of employment, and that this was supported by the consensus of medical opinion. It was tentatively recommended that the worker be granted entitlement for a right wrist disability with temporary total disability benefits being paid up to August 16, 1983, when the Workers' Compensation Board surgical consultant found no existing organic disability.

The accident employer responded by indicating that it did not consider the increase in the production line to be significant and felt that, as the worker had experience with spray-painting automobiles in a body shop over a four-year period, the wrist disability could not be considered a result of unaccustomed strain. As no response to our tentative conclusion and recommendation was received from the Workers' Compensation Board, we determined that a reasonable amount of time had passed for the Board to respond. In the final report, it was noted that the increase in the production line was sufficient to give rise to unaccustomed strain, and that such a causal connection was supported by the medical opinions available. Spray painting in a body shop neither corresponded with spray painting on a production line, nor spoke to the issue of a production line that was increased from approximately 70 cars per shift to over 200 cars per shift.

The report concluded that the Appeal Board decision complained of was unreasonable in not accepting the worker's right wrist disability as being the result of an accident or as disablement arising out of and in the course of his employment, and recommended that entitlement be granted for the right wrist disability, with benefits being paid to the August 16, 1983 date.

Following receipt of the final report, the Committee to Review Appeal Board Decisions reconsidered the Appeal Board decision and by letter of September 4, 1986, we were advised that the Board had rescinded the overpayment and further benefits were to be processed in recognition of the worker's right wrist disability arising out of and in the course of his employment.

Accidents at the workplace often aggravate pre-existing conditions. In the following case, the Ombudsman obtained additional medical evidence to convince the Board that a causal relationship existed between the accident and a pre-existing problem.

SUMMARY NO. 15

In 1981 a sewing machine operator fell and sustained what initially presented as a knee injury. When, some three months later, the knee cleared, it became apparent that she had developed a serious hip problem. Her physicians postulated that the mechanics of the knee injury aggravated a pre-existing hip osteoarthritis. The Workers' Compensation Board, however, refused to recognize a causal relationship on the basis that hip problems did not appear until 1983.

On the strength of existing medical evidence, the Ombudsman tentatively argued that entitlement for a hip disability should have been granted on the basis of an aggravation of a pre-existing condition. The Board responded that it disagreed with that tentative conclusion and recommendation, having obtained the opinion of its medical consultant who argued that the claimant's continuing hip pain was related to the slowly progressive osteoarthritis and not to the transient soft tissue injury to the knee.

Because we were not persuaded by the Board's response, further consultation was conducted with the worker's treating specialist and a medical opinion clearly in her favour was obtained.

After considering this final submission, including the new medical evidence, the Board accepted the Ombudsman's recommendation that entitlement for a hip disability be granted. As a result, the worker was awarded temporary total disability and health care benefits for approximately three years. Also, the Board agreed to assess the claimant for a permanent disability rating in due course.

The Ombudsman will persist until a valid complaint is rectified.

SUMMARY NO. 16

A mechanic employed at a truck repair centre first complained in 1981 to the Ministry of Labour, Occupational Health and Safety Branch, about the poor quality of the air in his workplace. He complained of high carbon monoxide levels and that the ventilation system was inadequate, due primarily to the lack of flexible hoses for use on exhaust pipes. From 1981 to 1984, Ministry officials attended at the workplace and conducted a series of tests. The complainant was not satisfied with the results of the tests and complained about the manner in which the tests were conducted. Unhappy with the actions of the Ministry, the complainant contacted our Office in March of 1984. Ministry officials then attended at the workplace and conducted a further series of tests. The Ministry, on the basis of these tests, concluded that the air quality at the workplace was not a hazard to the workers and determined that the exhaust system was "Not inadequate".

We persistently brought the concerns of the complainant to the Ministry and finally, in November of 1986, Ministry officials issued an order for the company to install flexible hoses for use on exhaust pipes. The complaint was resolved because the complainant's concerns had finally been addressed by the Ministry officials.

CORRECTIONAL SERVICES

The Ombudsman's investigation resulted in an inmate's receiving medical appliances to alleviate the discomfort of a physical disability.

SUMMARY NO. 17

This inmate submitted a letter to our Office from a provincial detention centre, complaining about a difficulty he was having in securing appropriate footwear while in the detention centre.

Approximately five years prior to this incarceration, the inmate was involved in a motorcycle accident, causing severe disfigurement of his ankle and calf, resulting in him having to wear orthopaedic shoes. The inmate claimed that he had orthopaedic shoes, but had taken them into a shoe repair shop; in the meantime he was incarcerated. During the first couple of months of his incarceration, he discussed his concern with the medical staff and institutional social worker. He had hoped the institution would be able to retrieve his orthopaedic shoes from the shoe repair shop. The inmate indicated that in the meantime he was wearing institutional shoes in which he was unable to walk. The inmate was unable to get anyone in the institution to take action to resolve his dilemma either by obtaining his own orthopaedic shoes from the repair shop or by providing him with another pair of orthopaedic shoes.

When our Office commenced our inquiry into this concern, we found that no one at the institution had contacted the shoe repair shop or had alternatively decided to provide him with new orthopaedic shoes. After the problem was discussed with the Superintendent, he agreed to resolve the complainant's concerns.

A subsequent inquiry with the Deputy Superintendent revealed that although the institution had not been able to locate the inmate's own orthopaedic shoes, he had been sent to be fitted for a new pair of orthopaedic shoes, valued at approximately \$400.

In this case, the Ombudsman's investigation resulted in financial compensation to an inmate whose personal property was damaged during an institutional search.

SUMMARY NO. 18

A portable stereo was purchased for the inmate and brought to the institution to be placed with the inmate's property. While the institution accepted the portable stereo for placement in the inmate's property, the institutional officials suspected that the stereo was being used to conceal contraband drugs. Therefore, with the assistance of the local police, the stereo was searched. This resulted in some damage to the unit. When no contraband was found, the stereo was placed back in the inmate's property in a dismantled state. Shortly thereafter, the inmate and his property were transferred to a federal institution.

Upon his arrival, the inmate learned that the provincial institution had tampered with his stereo. The inmate corresponded with the Minister of Correctional Services but was unsuccessful in his attempt to have the Ministry replace the stereo or refund the purchase price.

The inmate contacted our Office with his complaint. After assessing the complaint, the Deputy Minister of Correctional Services notified our Office that a cheque had been forwarded to the inmate in the amount of \$206., compensating the inmate for the full purchase price of the portable stereo.

Although this complaint arose in a privately administered facility, the Ombudsman's investigation resulted in a change in local policy to ensure that inmates would be treated in accordance with general Ministry policy.

SUMMARY NO. 19

On July 23, 1987, the complainant contacted our Office to lodge a complaint against a Community Resource Centre. She alleged that while her brother was residing at this half-way house, she was unable to visit him because the policy of the Community Resource Centre precluded visitation by siblings. This policy stipulated that only parents or girlfriends of inmates were allowed to visit. The rationale given by the Director of the half-way house for this policy primarily related to size of the visiting room and problems encountered by staff when other inmates' siblings had previously visited. The complainant's contention was that the Community Resource Centre's policy regarding sibling visits was unreasonable.

When we contacted the Ministry of Correctional Services for its response, the Ministry stated that as the Community Resource Centre was an agency funded by the Ministry, the same rules of visitation that apply to Ministry jails and detention centres and correctional centres should apply to Community Resource Centres.

The Ministry agreed with our position that a Community Resource Centre cannot restrict certain individuals from visits by virtue of their relationship to the inmate.

Consequently, the Centre was required to change its policy and allow siblings visitation rights with inmates at that Centre.

A case of mistaken identity which could have led to the complainant's being illegally incarcerated was resolved by the Ombudsman's investigation.

SUMMARY NO. 20

An inmate in an Ontario detention centre wrote to our Office indicating that he had been transferred to that location from a Ministry correctional centre, in order to appear in court on outstanding criminal charges. He stated that he had no outstanding criminal charges. He wished to be transferred back to the correctional centre, and asked our Office to review his allegation that he had no outstanding charges.

Our investigation revealed that the inmate's complaint was well founded. Specifically, there were outstanding criminal charges for a person with the same name as the complainant, but with a different date of birth. A check with the Inmate Records office at the detention centre revealed that these charges were dealt with in court, and the person was convicted. This information was erroneously placed on the inmate's Ministry of Correctional Services file at the institution. When the case of mistaken identity was brought to the attention of institutional authorities by our Office, the documentation of the inmate's file was rectified and the erroneous conviction and sentence were deleted from the inmate's file.

Further inquiries by our Office regarding this complaint revealed that the complainant was transferred back to the original institution eight days after he was interviewed by our investigator.

The Ombudsman's involvement in the following case resulted in the improvement of the procedures used for calculating the interest on monies held in trust for inmates by Superintendents of correctional facilities.

SUMMARY NO. 21

Four inmates who were serving their sentences at a correctional centre contacted the Ombudsman complaining that the Ministry of Correctional Services failed to credit them with the interest earned on their monies held in trust by the Superintendent.

All money earned by inmates at the Correctional Centre for work performed was held in trust for them and the money was deposited into a single trust account at a local Province of Ontario Savings Office. The interest earned on each inmate's money was not credited to each inmate. Rather, the interest was credited to a separate account called the "Cheer Fund" and used for the benefit of all inmates in the institution. For example, this fund was used to pay for movies shown in the institution, and to purchase refreshments and prizes for sports events.

When we began our investigation, the Ministry indicated that the Superintendent deposited and held all money earned by the inmates in the institution pursuant to the **Ministry of Correctional Services Act**, and that it would be impractical from an administrative point of view to have separate accounts for each inmate or to attempt to calculate the interest accrued to each individual. The Ministry further indicated that it was a privilege for inmates to be allowed into the community to work and earn money and, therefore, it seemed appropriate that they contribute to the benefits enjoyed by all, including those inmates who are not allowed the privilege of earning money.

The results of legal research by our Office revealed that there was no statutory or regulatory authority for the use of the interest on inmates' trust accounts in the manner followed by the Ministry. Furthermore, it appeared that the Superintendent or the Ministry stood in the relationship of trustee to the inmates with respect to these monies, and, as such, was under a duty to invest the trust funds and hold any income from the corpus in trust as well.

As a result, the Ombudsman reached the tentative conclusion that the correctional centre's omission to credit the complainants individually with the interest earned on their trust accounts was contrary to law. Accordingly, we recommended that the correctional centre repay the complainants the interest that accrued on their trust accounts and that the Ministry of Correctional Services alter its practice to ensure that henceforth, interest earned on inmates' trust accounts is credited to individual inmates.

As a result, the Regulations made under the **Ministry of Correctional Services Act** have been amended effective October 1, 1986. The regulation now provides that an inmate shall be credited with simple interest on his trust monies if the amount of money held in trust for the inmate exceeds \$100. through a quarter.

The procedures for calculating the interest on monies held in trust for inmates by the Superintendents were distributed to the Superintendents in October, 1986.

Through the Ombudsman's presentation of this issue to the Deputy Minister of Correctional Services, a significant policy change occurred guaranteeing administrative fairness for inmates in their dealings with senior Ministry officials.

SUMMARY NO. 22

An inmate in an Ontario correctional institution complained that the policy contained in the Ministry of Correctional Services' Manual of Standards and Procedures regarding official replies precluded him from receiving a copy of several replies to letters that he had directed to Main Office Ministry officials regarding his classification. The policy allowed for replies to be directed to the Superintendent of the institution. The Superintendent was advised to allow the inmate to read the letters and then have the inmate sign the letters acknowledging that he had read the Ministry's response. It was the complainant's view that since he was responsible for initiating the inquiry which in turn prompted a reply from Ministry officials, he should at least be afforded a copy of any intended reply to his inquiries. The complainant felt the Ministry's policy denied him an adequate opportunity to assess the content of the written reply and response if he had any further questions. In addition, the complainant felt that if he had directed the letters regarding his incarceration to the Ministry officials following his release, he would receive a written response, and therefore, he could see no valid reason why he should not receive direct responses while in custody.

After we notified the Deputy Minister of Correctional Services of the above complaint, he assembled a committee to review this Ministry policy. As a result of the review, a Directive was issued to all Superintendents informing them that inmates would now receive direct written responses to their inquiries from senior Ministry staff, and a copy of the reply would be sent to the Superintendent of the institution.

SOCIAL BENEFITS

The learning disabled have special needs. In the following case the Ombudsman's recommendation prompted the Ministry to provide partial funding for the attendance of a severely learning disabled child at a school in the United States.

SUMMARY 23

The complainants contacted our Office with a complaint against the Ministry of Community and Social Services and the Social Assistance Review Board. They were dissatisfied with the decision of the Director of Vocational Rehabilitation Services (VRS) to deny them special education funding for their son's attendance at a private school in the United States. They were also dissatisfied with the Review Board's decision to uphold the Director's decision.

The complainants' son was a severely learning disabled child. He was eligible for funding for private education in 1982/83 and 1983/84 because his local school board could not provide an appropriate educational program that would meet his special needs.

The Director of VRS had also approved funding for the complainants' son to attend a private school in the 1984/85 school year. However, when the parents decided to enrol him in a private school in the United States, Ministry funding was withheld.

The parents applied to a special Review Committee for VRS/LD Placements which was set up to ensure that students whose needs were of a highly specialized nature were placed in appropriate educational settings during 1985/86. The Review Committee advised us that the parents were not eligible for a review because they had not received funding in 1984/85.

In the course of our investigation, we confirmed that the complainants had been granted funding for their son's schooling in 1984/85, although no money was actually paid.

The Ombudsman tentatively concluded that the decision of the Ministry of Community and Social Services to deny the complainants partial funding under the **Vocational Rehabilitation Services Act** and Regulations was unreasonable, and he tentatively recommended that the complainants be reimbursed an amount equal to the amount it would have cost the Ministry for placement at a private school in Toronto.

Secondly, it was recommended that the Ministry of Community and Social Services immediately notify the Review Committee for VRS/LD Placements of the complainants' son's eligibility for a review so that a hearing could be scheduled before the Committee disbanded.

The complaint was considered resolved when the Ministry of Community and Social Services agreed to provide the complainants with partial funding and when the Ministry of Education agreed to authorize the Review Committee for VRS/LD Placements to review the complainants' son's placement application for the 1985/86 academic school year.

Often a complainant has misunderstood a request for particulars from a Ministry. In the following case, the Ombudsman was able to clarify what OHIP required to process a claim and expedite processing of the claim.

SUMMARY NO. 24

The complainant contacted the Ombudsman because OHIP had rejected the documentation she had submitted of her visit while on vacation to a hospital in the United States to obtain care for a foot injury. The documentation consisted of a statement for \$19.00 for radiological services, a copy of her hospital registration, a handwritten breakdown of the hospital charges from the admissions clerk, and a receipt for the \$100.00 U.S. that she had paid the hospital. A notice from OHIP led the complainant to believe that an itemized invoice for the \$19.00 charge was required. Her letter to the radiological facility requesting an invoice went unanswered and she did not see how to satisfy OHIP's request for particulars.

Our office contacted OHIP to find out what documentation they would accept. OHIP clarified that the \$19.00 charge had been accepted, but that the hospital charges required an itemized invoice under the hospital's letterhead. As the complainant sent her letter to the wrong facility, our Office sent her request for an itemized invoice on to the hospital, which resulted in her prompt receipt of the required invoice. After submitting this information to OHIP, the complainant was reimbursed in full.

Informal inquiries often are enough to resolve a complaint. In the following case a substantially reduced overpayment was obtained for the complainant without the need for a formal investigation.

SUMMARY NO. 25

The complainant contacted the Office of the Ombudsman with a complaint against the Ontario Student Assistance Program (O.S.A.P.) after he had unsuccessfully appealed an Ontario Study Grant overpayment of \$940.00. The fact that his father incurred unrelated legal expenses during the year in question was the critical factor in his appeal. He argued that legal expenses should reduce the expected parental contribution. In reply, O.S.A.P. explained that legal expenses could only be viewed as extraordinary expenses with regard to loans, not grants. This position was contrary to the advice the complainant was given by an O.S.A.P. official when he first inquired about the grounds for appeal.

We were informed by O.S.A.P. that at the time O.S.A.P.'s reply was sent to the complainant, the legal expenses were only a factor with regard to student loans. However, that policy had subsequently been changed to include both loans and grants.

The question remained whether the new policy was retroactive.

Since the complainant had not fully documented the legal fees in question, it was suggested that he submit another appeal. This time he was advised to include full documentation of all legal expenses.

The new appeal resulted in O.S.A.P. reducing the overpayment to \$470.00 from the original \$940.00. O.S.A.P. explained that the decision was made on compassionate grounds. Retroactive application of the policy change was accepted by O.S.A.P. and the complainant was delighted by the outcome.

Sometimes a complainant will seek flexibility in Ministry policy because of reasons personal to that individual. In the following case, the Ombudsman was able to make those reasons known to the Ministry, and the Ministry agreed to proposed arrangements to repay an outstanding debt.

SUMMARY NO. 26

The complainant contacted the Ombudsman in December, 1986, because he had been advised by the Ministry of Community and Social Services that arrears were owing to him in the amount of \$234.00 and would be applied against an overpayment which he owed the Ministry. He wanted the amount of arrears paid out to him as a lump sum, with deductions being made from his Family Benefits Allowance for the overpayment (at a rate which had been previously established) to continue. He believed this arrangement would ease his difficult financial circumstances.

Our Office contacted the Ministry and it was confirmed that the Ministry's policy was to apply arrears against outstanding overpayments to reduce the debt owed to the Ministry. After further discussion, the Ministry agreed that the complainant could receive a lump sum payment as long as the complainant understood that the overpayment amount would remain and deductions would continue. The complainant accepted this and had money for Christmas.

RECOMMENDATION DENIED CASES

In the second volume of my annual report for this year, I am reporting 25 cases in which the governmental organizations involved have refused to implement my recommendations.

Five of these cases involve complaints of parents against the Ministry of Education concerning the refusal of funding for the special education of their children.

In two of the cases I have recommended compensation for inmates who suffered physical injury in a provincial institution in a situation in which, in my view, the authorities did not take reasonable care to prevent such an occurrence.

Three cases involve the refusal of the Ministry of Agriculture to satisfy claims of goat's milk producers against the Milk Commission of Ontario arising out of the financial collapse of a local processing plant.

In another case, I have recommended that the Ministry of Health recognize the claim of a homosexual couple to dependent status for the purpose of payment of OHIP premiums.

Four cases involve recommendations for payment of compensation or reduction of administration costs to complainants whose affairs were handled by the Public Trustee in a manner which I found to be unsatisfactory.

Finally, the Workers' Compensation Board has refused to implement recommendations in ten cases which I have decided to report to the Legislature. Four of these involve entitlement to benefits, two involve hearing loss claims, and one deals with the manner in which the Board calculates the wage basis used to determine the temporary benefits payable.

Detailed summaries of all of these cases appear in Volume II of my report.

ONTARIO OMBUDSMAN STAFF TO MARCH 1987

AITKEN, Janet
 ALLAN, John
 AMENTA, Paul
 ARKELL, Tim
 BAILIE, Sam
 BAIN, Dorothy
 BERNIER, Suzanne
 BIDEEL, Joan
 BITTIRA, Gangu
 BOOTHBY, Paula
 BOURNS, Maureen
 BROOKS, Paul
 BROOKWELL, Larry
 BRYANT, Dale
 BUBRIN, Vladimir
 BUCKSTEIN, Elaine
 BURROWS, Patricia
 BYLSMA, Klaas
 CAP, Wanda
 CARLINO, Gerry
 CARTEN, Jennifer
 CHAMBERS, Sharon
 CHIASSON, Lucille
 CHIC, Jacquie
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 COOLMAN, Joyce
 CORION, Margaret
 CROSSLEY, Barbara
 CUMMINGS, Penny
 CUTLER, Jeffrey
 DEAR, Rosie
 DEARDEN, Sylvia
 DEPOCAS, Elise
 DESBIENS, Pauline
 DUNNILL, Michael
 ELDRIDGE, Carole
 ESTORBA, Josie
 EVANS, Cathy
 FENTON, Mary Jane
 FITZPATRICK, John
 GABRIEL, Liz
 GERHARD, Perry
 GLICKMAN, Sheldon
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 GRAY, Virginia
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 HILL, Dr. Daniel G.
 HIRST, Barbara
 HOBSON, Jim
 HOFFMAN, Judith
 HOLMES, Jackie
 HOLMES, Sterling

IAHTAIL, Mary Lou
 JAMIESON, Marion
 JONES, Christine
 KAGAN, Kenneth
 KATAMAY, Olga
 KEIL, Martha
 KERSHAW, Janet
 KING, Dianne
 KNUDSON, Inez
 KUCAN, Mary Ann
 KUTA, Liz
 LAMPKIN, Lorna
 LANGELIER, Pierre
 LA ROSA, George
 LATINCIC, Mary Ann
 LEE, Allan
 LEE, Barbara
 LEGARDO, Lourdes
 LESSER, Al
 LOGAN, Rosemary
 LUCAS, Lourine
 LYNCH, Gwen
 MACDONALD, Andrew
 MACKEY, David
 MARKIEWICZ, Eva
 MARTIN, Christine
 MAY, Laurel
 MAYERS, Arlene
 MCCOLLIN, Phyllis
 MCKAY, Catherine
 MCLEOD, Maret
 MCNAMARA, Cecilia
 MCPHEE, Sherrie
 MENNIE, Florence
 MESLIN, Eleanor
 MILLS, Allan
 MORRISH, Ginette
 MORRISON, Gail
 MORTON, Margret
 NAISH, Doug
 NASIR, Josie
 NICHOLAS, Jim
 ORLOWSKI, Diane
 ORTVED, Janet
 PELLETIER, Allan
 ROBERT, D'Arcy
 ROBSON, Donna
 RODGERS, Faye
 ROMAN, Josie
 ROWE, Robin
 RYAN, Lee
 SAVAGE, Harvey
 SCHARBACH, Stephen
 SCHULZ, Wolfgang
 SEALEY, Carol
 SHANKOWSKY, Harry
 SEMENCIW, Joe
 SIGGENS, Diane

SKENE, Tom
SORA, David
SOUCIE, Claude
SOUSA, Maria
STANLEY, Marilyn
STEADMAN, Dorothy
TAMAYA, Fern
THEN, Milan
THOMS, Joanne
TORRANCE, William
VAN KLEEF, Joy
VANSTONE, Valerie
VIRC, Elizabeth
WALCOTT, Margaret
WHEELER MCSWEENEY, Karen
WORKU, Habte
YOUNG, Pamela
YUEN, Jacqueline
ZACKS, Michael

LANGUAGE FACILITIES

*The staff of the Ombudsman's Office is multilingual.
We can communicate in 25 languages.*

Amharic
Cree
Croatian
Czech
Dutch
Estonian
English
Filipino
French
German
Hebrew
Hindi
Italian
Kannada
Macedonian
Ojicree
Polish
Portuguese
Russian
Serbian
Slovak
Slovenian
Spanish
Ukrainian
Yiddish

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Tel.: (705) 759-2871

NORTH BAY FIELD OFFICER

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North Bay P1B 8J1
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MEMBERS OF THE STANDING COMMITTEE ON THE OMBUDSMAN

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Mr. E.T. Philip	Etobicoke
Mr. Y.R. Shymko	High Park-Swansea

CLERK: Mr. T. Decker

STAFF:

Mr. J. Bell, Counsel
Ms. C. Evans, Research Officer,
Legislative Research Services.

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THE OMBUDSMAN OF ONTARIO

ANNUAL REPORT 1987-88



The Ombudsman | Ontario

DANIEL G. HILL
OMBUDSMAN

125 QUEEN'S PARK, TORONTO, ONTARIO
M5S 2C7
TELEPHONE (416) 586-3300

June 28, 1988

The Speaker
Legislative Assembly
Province of Ontario
Queen's Park
Toronto, Ontario

Dear Speaker:

It is an honour and a pleasure to present the Fifteenth Annual Report of the Ombudsman for the period April 1, 1987 to March 31, 1988.

This report is submitted pursuant to section 12 of the Ombudsman Act.

Yours sincerely,

Daniel G. Hill



DANIEL G. HILL

OMBUDSMAN'S MESSAGE

This is my last Annual Report as Ombudsman of Ontario. As I enter the final year of my term I feel it is an appropriate time for critical reflection, expressions of appreciation and comment on the future of this important institution.

Article 21 of the United Nations Universal Declaration of Human Rights guarantees the fundamental right of the citizen to reasonable access to the services of government.

As Ombudsman, my policy for this Office has reflected my commitment, and the historic provincial commitment, to human rights.

When I was sworn in as Ombudsman in March of 1984, one of my priorities was to make this Office as accessible as possible to all of Ontario. And by that, I mean the new Ontario-multilingual, multiracial and multicultural. To achieve this goal I undertook several major projects.

One was an increased emphasis on regional services. We now have offices or field representatives in eight major population centres throughout the province. Several are located in store-front facilities which have proven to be very visible and convenient for local residents.

I am delighted to report that my experimental field officer project - the strategic placement around the province of locally recruited staff representatives to do outreach work and receive complaints - has proven to be a resounding success and I have decided to continue the project on a permanent basis.

My commitment to give all Aboriginal people, particularly the geographically or culturally remote communities, an equal opportunity to utilize this Office, remained a high priority during my administration. I and Native staff members personally visited many of these communities and met with numerous Native organizations to improve access to the Ombudsman's services.

My commitment to the Ontario of today was also reflected in my staffing policies for this Office. I am proud to say that my staff is multiracial and multilingual. Also, we presently have 12 employees with French language capability and have designated an additional number of our future staffing vacancies as requiring French language ability.

In my view, if government is asking the private sector to be equal opportunity employers, then it should lead the way and be a model employer in this regard. Further, to ensure that ethnocultural issues are being dealt with sensitively and appropriately by the Office of the Ombudsman, I created a position of Special Investigator for Ethnocultural Issues to serve those Ontarians who are members of ethnic and visible minority communities.

Another initiative to further the accessibility of this Office involved the appointment of a Special Projects Officer to develop a community outreach program with Ontarians who are disabled.

I remain convinced that public education and community outreach are the most direct methods to make our services more accessible.

Four years have passed since I made my commitment to raise public consciousness about the vital role and function of the Ombudsman. The workload of this Office reached an all-time high last year. 21,173 complaints and information requests were closed, representing an increase of more than 52 per cent since I became Ombudsman.

These statistics indicate that we are reaching out to more people and reaching them more effectively. I attribute a large part of this success to our public education and outreach programs. The Communications and Publications and Community Relations units that I established have reached hundreds of thousands of people through educational seminars, workshops, conferences, newsletters, pamphlets, multilingual fact sheets, radio and television.

Community meetings have been held in locations across the province with the support of local and voluntary organizations. I and members of my staff have participated in more than 1,000 speaking engagements throughout the province in the last four years.

The Ombudsman's *raison d'être* is the investigation of complaints. During my administration I launched several initiatives to enhance the Ombudsman's ability to achieve his function effectively and efficiently.

I have reorganized our administrative structure to ensure that our organizational design accommodates changes in the types of complaints received and provides for development of areas of expertise in complaint processing. This has resulted in more streamlined complaint reception and expeditious case handling.

Productivity is enhanced by high staff morale. To better staff morale I introduced a first ever grievance procedure for employees, an employee relations committee and a senior management committee.

I have also taken a broader view of complaints and addressed the issue of systemic problems that come to our attention in the workings of governmental organizations by using the Ombudsman's statutory power to investigate on his own motion. This has been reflected in special investigations involving the Workers' Compensation Board, services for the developmentally handicapped in Ontario, and rent-geared-to-income housing in Moosonee. I refer the reader to my Introductory Remarks in this Report for a fuller explanation of these special projects.

During my term I have made efforts to establish a mediative and conciliative atmosphere with government agencies. I believe that mediation and conciliation are valid, appropriate and invaluable techniques for complaint resolution when the desired disposition is achieved without sacrificing the issues involved in the complaint. In this regard I established several ongoing committees with various governmental organizations, comprised of senior members of our respective staff to meet on a regular basis to discuss mutual concerns and settle, where possible, ongoing cases.

These committees, involving the Workers' Compensation Board, the Ministries of Correctional Services, Consumer and Commercial Relations, Health, Education, and the Metropolitan Toronto Housing Authority, have provided invaluable communications channels which in many instances have helped us avoid protracted paper disputes and resolved matters to the early benefit of the complainants involved.

Also, in order to obtain a speedier resolution of complaints and thus to ensure that a delay in justice does not result in a denial of justice, I established the practice of issuing Special Reports to the Speaker in cases involving governmental organizations that refused to implement my recommendations. Traditionally, such cases were reported annually. However, when, in my opinion, special circumstances or urgency exist, I do not wait for the issuing of my Annual Report, but submit a Special Report to speed up the process and hopefully obtain a resolution of the complaint through the Standing Committee which is prepared to consider such cases on a priority basis. I have issued seven Special Reports to date. In all seven I believe the interests of both the complainants and the governmental agencies were well served by this procedure.

And finally on this topic, we have successfully met the Ontario Labour Relations Board's court challenge to our jurisdiction.

I am proud of the fact that the Office of the Ombudsman has assumed a significant role in public life. Yet many challenges lie ahead.

During my term as Ombudsman I have become increasingly aware of the large number of requests for assistance from people with complaints against federal government agencies. These matters are outside my jurisdiction as provincial Ombudsman. While my staff makes every effort to refer people with complaints of a federal nature to the appropriate agency or person, I am convinced there is a glaring need for a federal Ombudsman.

For example, matters concerning immigration, postal service, veterans' benefits, unemployment insurance or income tax refunds, to name only a few, are all under federal jurisdiction.

Further, many of the issues affecting Aboriginal people are outside the jurisdiction of a provincial Ombudsman. The injustices, past and present, suffered by Native people cry for remedy. We can take pride in our strides for a just society only if no one is left behind.

Provincial Ombudsmen have existed in Canada for more than two decades. Let us no longer delay in creating a federal Office of the Ombudsman. I firmly believe that a federal Ombudsman would be of the utmost benefit to all Canadians.

There is another equally important and pressing challenge that must be addressed.

Seven years ago my predecessor proposed a number of amendments to the Ombudsman Act. When I became Ombudsman I reviewed those proposed amendments and added several more which I considered to be of supreme importance to the better functioning of the Office of the Ombudsman. The proposed amendments include changes to the Act: to permit the government to make monetary payments to people who have suffered a loss as a result of government action; to allow governmental organizations to reconsider their decisions where their current legislation does not provide for this; and, to require the Ombudsman to conduct educational programs to better inform the public about his responsibilities. Unfortunately the amendments to the Ombudsman Act are still outstanding. I urge the government to present these amendments to the Legislature as soon as possible.

Finally, I am pleased to report that another major challenge facing this Office, the issue of expanded jurisdiction, is about to be met.

The Ombudsman's jurisdiction has remained fixed since the inception of this Office in 1975. In 1985 I suggested that the Standing Committee consider whether other areas of governmental activity should be subject to the Ombudsman's investigative responsibility. At the Committee's request I tabled a position paper in September of 1986 with the Committee. The paper suggested that the Committee consider three possible areas to be added to our jurisdiction - the Ontario New Home Warranty Plan, Children's Aid Societies, and Public Hospitals, and that the Committee conduct public hearings to allow public and private agencies and individuals to participate in discussions of expanded jurisdiction.

The Committee has met to discuss the Ombudsman's policy paper and has decided to conduct public hearings and receive representations from interested groups and individuals on this matter. These hearings will be conducted in the summer of 1988 and I am hopeful they will provide a very useful forum to exchange views and to fully explore the implications of expanded jurisdiction.

There are many colleagues and friends who merit a special word of thanks.

First, I express my gratitude to the competent and committed staff who have assisted and advised me so ably during my term. The people of Ontario can be proud of the men and women of this Office who work so hard on their behalf.

I express my appreciation to the members of the Standing Committee on the Ombudsman, and indeed to all the members of the Legislature for their goodwill and support of this Office.

I also express my appreciation for the fine work of Ontario's eighty thousand public servants. I am impressed by the professionalism and probity of our public servants and by how seldom the actions of Ontario's officials provoke dissatisfaction and complaint.

I express my appreciation to my colleagues in the Canadian and world Ombudsman community who were very gracious to share their counsel and experience with me.

And I express my gratitude to the people of Ontario, for their interest, their support and full cooperation with this Office.

As I proceed into my final year as Ombudsman I hope to leave a healthy, vital organization to my successor. I am confident that the Office of the Ombudsman is well established and ready to serve the people of this Province.

I am proud of what we have accomplished in the service of our mandate to protect the people's right to fair treatment from their government. Our services are more utilized and better known throughout the province. Our capacity to handle complaints, the very core of our responsibilities, has been constantly refined and improved. We have become adept at referring people to the service they need, even when their complaints are beyond our jurisdiction. No one leaves our Office without at least a start on a solution to his or her problem.

Many of our recommendations have had important consequences both for complainants and for provincial government agencies. For many our intervention has been critical in reestablishing a sense of well-being and participation in community life. Our work has also frequently led to vitally important financial compensation for complainants who have to rely on government allowances for their basic income.

Our work has had an impact beyond the resolution of individual problems. On many occasions we have convinced Ministries to change or clarify procedures and policies which were inequitable or needlessly complicated. In some cases our recommendations have prompted the government to amend its legislation and regulations.

The Ombudsman has become a force to be reckoned with in community affairs and people can feel confident that the Ombudsman will give them a full hearing, and strive to redress grievances if they are found to be justified.

Personally, it was an honour and privilege to serve as the Ombudsman of Ontario. It is my hope that this vital institution will continue to thrive as an authentic agent for justice and the protection of human rights in this province.

A handwritten signature in dark ink, reading "Daniel G. Hill". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Daniel G. Hill

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INTRODUCTION

This Annual Report covers the fiscal year from April 1, 1987 to March 31, 1988. The Report has been divided into two parts.

Part I provides an overview of our last fiscal year and includes a selection of case summaries which illustrate the varied complaints that come before the Ombudsman.

Part II is devoted entirely to detailed summaries of recommendation denied cases and tables of all recommendations outstanding from past reports.

FISCAL YEAR 1987-88

In commenting on the past fiscal year, 1987-88, I am pleased to report that the number of requests for assistance processed by this Office was higher than ever before in our history. The number of complaints and information requests closed in the past fiscal year reached an all-time high of 21,173, an increase of more than 22% over the previous fiscal year. This includes 4,572 jurisdictional complaints, 12,897 non-jurisdictional complaints and 3,704 information requests, compared to 5,897 jurisdictional complaints, 8,424 non-jurisdictional complaints and 3,005 information requests for the previous fiscal year.

EXPEDITED CASE HANDLING

Expedited case handling has always been a priority during my administration. To ensure that our investigations are thorough, impartial and completed as expeditiously as possible I have constantly monitored case loads and complaints received to ensure that our organizational design meets current needs.

Although an all-time high of more than 21,000 complaints and requests for assistance were processed last year, I am aware that there is still room for significant improvement in the time it takes for us to complete our investigations. In this regard three interconnected projects have been proceeding during the course of the last year.

Delays Outside Our Control

One project concerns our on-going study of delays outside our control. The focus of this project is to pinpoint those governmental organizations who unreasonably delay in responding to our letters and reports at various stages of our investigation, and then, using this data, to develop strategies to improve the speed with which governmental organizations respond to us, in order to lower our response and reporting times.

In this regard I recently presented data to the Standing Committee and will continue to do so as verified data becomes available.

Kinley Report

In order to improve complaint handling and the statistical reporting functions of this Office, I retained the service of Mr. John Kinley, a highly respected research statistician, and former Director of Research for the Ministry of Labour. He was asked to prepare a report and recommendations on our case handling with the view to presenting, to the public, and the Legislature through the Standing Committee, data that accurately reflect all the work we perform, and how effectively we perform it.

Mr. Kinley's report, tabled with the Standing Committee, contains many important suggestions for improving our complaint handling and the presentation of statistics in our investigation and outreach work.

Expedited Case Handling Committee

As a result of the Kinley Report I appointed a Committee on Expedited Case Handling chaired by the Executive Director. The Committee consists of staff representatives from all sections of the Office including all Assistant Directors and the Director of Investigations.

It was struck to examine current practices in light of the Kinley Report, with the view to recommending more efficient and quicker case handling procedures, without sacrificing the integrity of our investigations.

Every aspect of case handling, from intake procedures to file closing, from the deployment of personnel to the use of information systems technology, is under scrutiny and open to recommendation.

I consider the Expedited Case Handling Committee the most important Committee that I have struck since becoming Ombudsman. The Committee has recently forwarded its report to me for my comments. An overview of the final report will be included in the next Annual Report.

INVESTIGATIVE REORGANIZATION

Since my last Annual Report, I have implemented a number of changes in the investigative organization of my Office.

Most important of these is a change in the way we handle complaints from Correctional Institutions.

Correctional Institutions Complaints

Previously we had five investigative teams: Labour and Psychiatric Institutions; Social Benefits; Justice and Licensing; Land Use/Resources/Revenue; and Corrections which was devoted exclusively to institutional investigations.

However, I was not satisfied that we were handling the multitude of complaints from correctional institutions effectively and efficiently. In consultation with senior staff, I decided to change the structure of this group entirely.

First, I assigned the responsibility for accepting and screening correctional complaints to a special unit in the Intake and Information area.

The necessity for such a unit was compounded by the decision of the Ministry of Correctional Services to provide telephones for the use of the inmates in most institutions in the province. This increased the number of telephone contacts with our Office, related to Corrections, to hundreds of calls per month, whereas previously most of our institutional communications had been by letter.

Since inmates now have a better opportunity to discuss their complaints by telephone, I have also changed the way in which the investigators deal with correctional complaints.

Instead of making regular visits to all of the institutions, now they only visit to investigate serious complaints in much the same way that investigations are carried out in other areas.

Complaints which can be handled through telephone inquiries, and with the help of institutional staff, no longer automatically require a visit from one of our investigators. Our Regional staff members often assist investigators by interviewing or obtaining information from institutions in their areas.

Under this revised procedure we have received excellent cooperation from most of the institutions in resolving complaints informally, where possible. To explain our new process to the institution and to allow new staff now involved in these investigations to become acquainted with institutional personnel, each of our Assistant Directors will visit all the institutions in their assigned areas.

I have personally visited various provincial institutions during this past year; and I will continue this practice in the coming year.

I am confident this reorganization will provide rapid solutions to many of the institutional complaints, while also providing expert investigations into those complaints which require a more formal approach.

IMPROVING ACCESSIBILITY

During the last fiscal year we furthered our goal of providing reasonable access to our services in several areas.

Regional Services

This area is divided into three distinct units: Head Office, District Offices, and Field Offices.

The administrative centre is located in the Toronto Head Office and consists of the Director, the Supervisor of Field Services, a Native Program Officer and an Administrative Secretary.

There are presently four District Offices, one in Ottawa, Thunder Bay, Timmins and Kenora, each with a full-time District Officer and Information Officer. The Timmins Office also has a Northern Native Program Officer based there with responsibility for servicing all northern Native communities.

Our Field Officers are located in Windsor, London, Sault Ste. Marie and North Bay. This was a pilot project, in which the Officers were hired as part-time contract employees. They originally operated out of their homes. The project began with the Field Officers working three days a week. However, the number of complaints and requests for outreach programs grew so rapidly, that we increased the working week to four days. I have recently recommended that Field Officers be made permanent full-time employees.

At present both the Windsor and London operations are now sharing space in community service premises. This helps to strengthen the link with the public and community groups through our outreach program in these communities. I hope to make similar arrangements for our Sault Ste. Marie Officer in the next year. Both District and Field Officers provide complete intake and community education services locally, thereby allowing direct and immediate access to our services.

A comprehensive study of service requirements in Northeastern Ontario has been completed by the Supervisor of Field Services, including recommendations for future locations. I am reviewing this study and will be announcing my plans for Northeastern Ontario in the new fiscal year.

Native Program

My commitment to give all Aboriginal people, particularly the geographically or culturally remote communities, an equal opportunity to utilize this Office, remains a high priority.

Our Native Program Officer, Mr. Allan Pelletier, acting as our provincial liaison coordinator of all Native activities and resource consultant for all Native complaints, has increasingly engaged in outreach efforts aimed at governmental organizations, such as the Race Relations Division of the Ministry of Citizenship, the Ministry of Correctional Services, and the Minister's Advisory Committee on Corrections, on the issue of native rights.

This is in addition to his regular program of contact with the Native organizations across the province. He has recently focused on Southern Ontario, visiting the Mohawk territory of Akwesasne, the Chippewas of Sarnia, and the Chippewas of Kettle and Stoney Point. He has been instrumental in helping to resolve a number of complaints involving Native people.

Recently, our Northern Native Program Officer, Mary Lou Iahtail, accepted a one-year secondment with the Mushkegowuk Council in Moosonee to prepare a position paper on Aboriginal self-government. Her replacement, Mr. Gilbert Cheechoo, is well known in the Moosonee area.

Special Investigator for Ethnocultural Issues

Ethnocultural issues have an important place in my work as Ombudsman. As a first step to ensure that these issues are being dealt with sensitively and appropriately by this Office, I recently created the position of Special Investigator to work primarily with ethnocultural communities.

This new position involves a significant amount of community outreach and public education work to promote understanding of the Office and encourage use of its services for those Ontarians who are members of ethnic and visible minority communities.

Special Project on the Disabled

When I became Ombudsman we had just entered the decade of the disabled, as proclaimed by the General Assembly of the United Nations in 1983. To further the accessibility of this Office, I appointed a Special Projects Officer, Ms. Carole Eldridge, to develop a community outreach program with Ontarians who are disabled. It was decided that not only would Ms. Eldridge develop the outreach program, but she would also handle complaints from those persons whose concerns related in some way to a disability. This project was described in my last Annual Report.

During the past year, Ms. Eldridge has been in contact with a wide range of agencies whose primary focus is the disabled. These include consumer groups, self-help organizations, and government agencies. The exchange of information with groups such as the Ontario March of Dimes, People United for Self-Help (PUSH), Council for the Disabled, the Resource, Educational and Advocacy Centre for the Handicapped (REACH), the Independent Living Centre in Thunder Bay, People First, Local Associations for Community Living, the Office For Disabled Persons, and the Handicapped Unit of the Human Rights Commission has expanded the service which my Office can provide. Throughout the span of the Project, I have become increasingly aware of the fact that there are members of the population who are not in a position to use my Office in the traditional sense. I refer to those Ontarians who are unable to communicate and give instruction as a result of their disability. I have, therefore, determined that should concerns be brought to my attention by third parties on behalf of "affected" persons (within the meaning of the Ombudsman Act) I will be conducting investigations "on my own motion" following jurisdictional determinations. It is my hope that this procedure will provide a vehicle for access to avenues of redress previously unavailable to such individuals.

Public Education

The activities of our Communications and Community Relations Units have expanded considerably during the last year. A major public education initiative was undertaken in the form of a "Learn About Your Ombudsman" campaign.

This initiative involved 432 public service radio announcements throughout Ontario, rapid transit advertising, the participation by the mayors of 58 municipalities in declaring a "Learn About Your Ombudsman Week" and was capped with a very successful first-ever Open House held on December 10, Human Rights Day, when our Toronto Office hosted more than 300 members of the Metro community.

The activities of our Community Relations Unit also included the organization of 146 seminars, workshops and conferences for front-line service providers, meeting with representatives of many community organizations, attending at various public functions and the distribution of thousands of public education materials.

Publications have been expanded to include posters and regional newsletters. Our multilingual fact sheets, now in twelve languages, have been expanded to include Korean, Hindi, Kannada, Vietnamese and Arabic.

More than 100,000 of our publications-pamphlets, brochures, our Equal Times and Regional Newsletters, multilingual fact sheets, posters and flyers-were distributed across the province.

Also, in Toronto, large billboard advertising was placed in 10 subway stations as a free public service.

NEW APPOINTMENTS

During the past fiscal year I made the following appointments to my senior operating staff.

Coordinator, Intake and Information (Acting)
— *Phyllis McCollin*

Supervisor, Field Services
— *David Sora*

In addition, with the development of our regional services program, I have made the following appointments:

District Officer, Thunder Bay
— *Inez Knudson*

Regional Information Officer, Thunder Bay
— *Gail Pfaff*

District Officer, Kenora
— *Harry Shankowsky*

Field Officer, North Bay
— *Marie Marchand*

SPECIAL PROJECTS INVOLVING SYSTEMIC PROBLEMS

The Workers' Compensation Board and Psychotraumatic Entitlement

Over the years that this Office has dealt with the Workers' Compensation Board, we have noted a recurrence of certain types of complaints. One of these complaint areas was psychotraumatic entitlement.

In an attempt to find out whether our perception of a systemic problem in this area was justified, I initiated a special project directed by one of our most qualified investigators, Ms. Faye Rodgers. The project involved reviewing our W.C.B. files in which psychotraumatic entitlement was a factor. One hundred and twenty-two complaints brought to this Office between 1977 and 1986 were examined in light of W.C.B. legislation, policy and practices. Major problems identified by our review were: the Board's preference for its own doctor's opinions; identification of pre-existing conditions; and reliance on certain phrases to justify disentanglement. As a result of this project, I have made several recommendations whose implementation, in my view, could help improve the adjudication process, and address the problems identified.

The report with recommendations has been published and forwarded to the Chairman of the Workers' Compensation Board for his comments. The report is also available to the public.

Rent-Geared-To-Income Housing In Moosonee

As stated in the last report, in response to a number of complaints from tenants and applicants in the Moosonee area, a number of them from the Native community, I started a special project to investigate the Timmins Housing Authority's administration of rent-geared-to-income housing in Moosonee. The investigation was initiated in December of 1985 in accordance with Section 15(2) of the Ombudsman Act. The investigation included interviews with Housing Authority staff, tenants and applicants, as well as an extensive review of the Housing Authority tenant and applicant files. In December of 1986, the interim results of the investigation were reported to the Housing Authority, the Ontario Housing Corporation and the Minister of Housing and included approximately 40 recommendations concerning matters of housing policy, practices and procedures.

A response from these agencies to the interim results was received and reviewed. A meeting was held attended by officials of the Timmins Housing Authority, the Ontario Housing Corporation and myself and members of my staff. At this meeting, each of my recommendations was discussed and resolutions were arrived at with regard to all but three. These relate to the provision of an elevator or a ramp to provide access to the second floor of the senior citizens' building in Moosonee, the provision of refrigerators and stoves in family units, and the policy question on appliances. I will continue to deal with officials of the Ontario Housing Corporation in the hopes of resolving these questions as well. If they cannot be resolved, I may issue a final report in this matter.

While my legislation does not permit me to go into detail about the matters which were resolved, the following are some of the Housing Authority's and the Ontario Housing Corporation's practices which have been implemented and/or confirmed as a result of my investigation:

- More information will be included in Housing Authority correspondence to applicants about the application process and the way people are housed.
- Applications will be assessed based on facts and not hearsay and where there is doubt as to an applicant's circumstances, efforts will be made to clarify those circumstances.
- Specific reasons will continue to be given to those who are declared ineligible for housing and they will also be given information as to their rights of appeal.
- Additional information will be provided in plain language where notices of termination are issued.
- The form "Agreement to Terminate a Tenancy" will not be used except where a tenant has expressed an explicit desire to terminate the tenancy either before the lease expires or without the required 60 days notice.
- Where the "Agreement to Terminate a Tenancy" is used, it will provide information to the tenant as to his/her rights or obligations concerning the agreement.
- The Ontario Housing Corporation has created the new position of Director of Tenant Relations with a mandate to involve tenants in decisions which affect them.
- The Housing Authority has, for some time, been attempting to have the standard lease translated into Cree and once this is done, will provide it to any tenant who is interested.
- The Housing Authority will also make available in Cree additional information concerning tenancies (once that has been translated also).
- More active measures will be taken to transmit information to tenants and applicants.
- The Ontario Housing Corporation will provide funding for the Timmins Housing Authority to hire a community worker in Moosonee to carry out the functions of a community relations worker, a position which exists in other housing authorities.
- Funds would also be set aside in the next budget for the creation of a Tenants Association in Moosonee.

I am very pleased that this investigation has resulted in a number of positive changes which will improve the administration of publicly funded housing in Moosonee.

FINANCIAL COMPENSATION FOR COMPLAINANTS

The government has taken the position that the government cannot make a payment of public money on an Ombudsman recommendation unless there is appropriate authority for the payment. A payment for which there is no legal requirement to pay is referred to as *ex gratia*. *Ex gratia* payments have been consistently rejected by the government. This has resulted in a proposal to amend the Ombudsman Act to provide statutory authority for payment where there is no other legal authority to pay. The amendment will provide that if a Minister agrees to make a payment for under \$1,000 his or her agreement would constitute statutory authority for the payment. Where the amount of compensation is in excess of \$1,000, the amendment would require that the Lieutenant Governor-in-Council concur.

In the interim, until the Ombudsman Act is amended to create this legislative authorization process, I believe it may be possible for a governmental organization to make *ex gratia* payments to complainants on an Ombudsman recommendation, if the Ministry allocated funds in its annual budget estimates.

ISSUES FROM PREVIOUS REPORT

Office of the Public Trustee

The ongoing dispute between the Ombudsman and the Public Trustee has ended. Since the Ombudsman's last report Mr. Hugh Paisley has been appointed the new Public Trustee and a most cooperative relationship now exists with the Ombudsman.

Ontario Labour Relations Board Litigation

The dispute between the Ombudsman and the Ontario Labour Relations Board has now been concluded. The Supreme Court of Canada refused to grant the Board leave to appeal the unanimous Ontario Court of Appeal decision supporting the Ombudsman's right to investigate the merits of Labour Board decisions. The twenty-four cases the Board held up while awaiting the Court's decisions are now being processed.

STAFF MORALE

Maintaining a high level of staff morale is a major management responsibility. In this regard I believe the Ombudsman should be exemplary by ensuring employees the right to grieve and providing for a structured forum where employee concerns can be expressed.

Grievance Procedure

I am pleased to report that we became the first and only Canadian Ombudsman's Office to adopt a formal grievance procedure for our employees when I signed our Employee Grievance procedure document last October.

This document was created by the efforts of a joint management-employee committee, which included elected staff representatives. On the few occasions the procedure has been implemented, the results have proved very satisfactory to all concerned.

Joint Management-Employee Relations Committee

The Joint Management-Employee Relations Committee is composed of elected employee representatives and members of senior management. In addition to negotiating and revising the grievance procedure on an annual basis, members of this committee meet on an "as needed" basis to discuss concerns and exchange information.

FRENCH LANGUAGE SERVICES

I consider the provision of services in the French language a high priority. In this regard the Office has prepared a French Language Services Implementation Plan for the approval of the Office of Francophone Affairs. This plan will ensure that all services of this Office are provided to the public in both official languages. At the present time we have 12 bilingual staff members.

Additional bilingual staff are being recruited as positions become available. An additional toll free telephone line has been installed to respond to inquiries from the Francophone community.

Case Summaries

CASE SUMMARIES

SOCIAL BENEFITS

The Ombudsman's investigation found that the Ministry of Health's retroactive application of a new condition for the transfer of OHIP billing privileges was unreasonable and, following his recommendation, the Ministry agreed.

SUMMARY NO. 1

The complainant is a physiotherapist who applied for a transfer of OHIP billing privileges. He agreed to the conditions stipulated by the Ministry and was told that it would take approximately six to eight weeks for Cabinet to approve his transfer request. After approximately a four-month wait and many inquiries the complainant was advised by the Ministry that he would be required to accept an additional condition before his request would be submitted to Cabinet. The condition was that he limit his practice to two physiotherapists including himself. The complainant did not accept this and considered it to be unreasonable in the circumstances.

Our investigation determined that this new condition was not in place at the time of the complainant's request and that his request was held in abeyance while the senior management committee discussed the implementation of the new condition and its application in our complainant's case. The Ministry of Health was advised of the Ombudsman's tentative recommendation that the new condition not be applied in this case.

The Deputy Minister of Health responded that the Ministry would comply with the Ombudsman's recommendation on the basis of our findings. The complainant was granted the transfer of OHIP billing privileges in accordance with the original agreement.

Sometimes the Ombudsman is in a position both to resolve an individual's complaint and to recommend substantive policy changes. In the following case, the Ombudsman assisted a mature student in recovering monies owed him by the Ontario Student Assistance Plan (OSAP) and was instrumental in effecting certain changes in the administration of the program.

SUMMARY NO. 2

The complainant enrolled at a community college in order to retrain himself following a work accident which left him unable to return to his former occupation.

In August of 1985, the Financial Aid Administrator (FAA) of the community college advised the complainant of an additional local transportation allowance for married students for which he could apply under the Ontario Student Assistance Program (OSAP). The Ministry of Colleges and Universities granted the additional allowance.

In November of 1985, the complainant appealed to the Ministry requesting a reassessment of his award with respect to entitlement to the special allowance for the earlier 1983/84 academic year. He explained that he was not aware of the allowance prior to 1985 and, in fact, had been advised that he was receiving the maximum award possible. The Ministry refused to consider the appeal because the time for appeal had expired. The Ministry also stated that since it was impossible to list all the areas under which a student may appeal in a brochure, the Ministry provided each college's Financial Aid Administrator with a comprehensive manual of OSAP policy and procedure. However, it was the Ministry's view that since the FAA dealt with a large volume of OSAP applications, it could not possibly anticipate the exceptional circumstances of each student who might have grounds to appeal his/her OSAP assessment. It was, therefore, in the Ministry's view, not mandatory that these officials advise OSAP applicants of possible areas of appeal. Rather, the onus rests with the student to indicate financial need. In this case, the Ministry believed that the complainant did not advise his FAA in September of 1983 of his financial constraints. Further, the Ministry maintained that OSAP officials would not have had any way of knowing that the complainant was commuting on a daily basis, as the only information on the application form was whether the distance travelled was over or under two kilometers.

While noting that it was reasonable for the Ministry to set deadlines with respect to appeals, the Ombudsman recommended that an exception be made in this case due to the lack of clear information provided in the OSAP brochure outlining the grounds for appeal. Similarly, although the Ombudsman did not disagree that the onus lies with the student to advise the FAA of his or her financial need, it was the Ombudsman's view that students must have available to them sufficient information to reasonably assess what might be considered an eligible financial need and whether additional assistance is available. While accepting the Ministry's claim that it would not be

possible to know from the OSAP form that the complainant was commuting daily, the Ombudsman concluded that the form provided insufficient information to permit an OSAP official to determine the actual distance travelled by a student and thereby assess his or her eligibility for this special transportation allowance.

The Ministry was persuaded by the Ombudsman's arguments and therefore:

1. Considered the complainant's appeal and agreed that the monies should be paid retroactively.
2. Agreed to consider adding a statement to the OSAP brochure which would indicate that the examples provided under the appeals procedures section do not constitute an exhaustive list of the circumstances which might entitle a student to additional assistance, and that, therefore, the FAA should be consulted.
3. Agreed to consider expanding the statement in the brochure under the allowable educational expenses section to include the special transportation allowance for married students.
4. Agreed to examine the possibility of amending the application form.

There are occasions when the Ombudsman will express his views on a matter of public policy which emerges during the course of an investigation, although he cannot support the person's complaint. In this case, the actions of the Ministry of Health in connection with the provision of obstetrical services in a northern Ontario hospital were judged to be reasonable. However, the Ombudsman made some general policy observations.

SUMMARY NO. 3

The complainant contacted the Ombudsman with respect to her contention that the Ministry of Health had acted unreasonably in supporting a decision of the Board of Directors of a local hospital to exclude an obstetrical ward in the plans of a new facility. The complainant suggested that the Ministry's decision not to intervene in this matter might indicate a Ministry policy to exclude obstetrical wards from small hospitals in Northern Ontario, and that the Ministry acted unreasonably in allowing the local doctors to cease routine deliveries in the community,

necessitating the transfer of women to a hospital in a major centre. Such transfers, she contended, would cause undue stress for women in labour, exposing them to potential risks due to inclement weather conditions, separation from family and friends, and attendance by doctors unknown to their patients.

The Ombudsman was assured by the Ministry of Health staff, the local district health council, and the administrator of the hospital that the new building would offer obstetrical facilities superior to those available in the current structure.

The Ombudsman concluded that, since there were no plans to open the proposed new facility without an obstetrical unit, the actions of the Ministry of Health were not unreasonable. Further, the Ombudsman observed that the Ministry could not be held responsible for the physicians' refusal to deliver in certain areas, since the medical profession is self-regulated and governed by the College of Physicians and Surgeons of Ontario. He was therefore unable to reach a conclusion on this aspect of the issue, as the actions of private individuals, such as physicians, do not fall within the Ombudsman's jurisdiction.

However, the Ombudsman expressed the view that it would seem reasonable to work toward a system of health care which would offer women and their mates choices when selecting obstetrical care, regardless of the area of the province in which they reside. He stated that residents of Northern Ontario should enjoy the same level of service and the same range of options as residents of Southern Ontario. The Ombudsman remarked that he was pleased to see that the government is considering the report of the Task Force on the Implementation of Midwifery, which, if adopted, would broaden the range of choices for women and their families across the province.

JUSTICE AND LICENSING

In this case, the governmental organization changed its decision when the Ombudsman pointed out that in fact, the complainant's circumstances fit into one of its policy's exceptions.

SUMMARY NO. 4

A student complained to our Office about the decision of the Public Service Superannuation Board (PSSB) to deny her a Survivor's Benefit because she was not "continuously" in school. Upon her

completion of first year university, the complainant made attempts to enter a different program of her choice. This program was already full at the several universities and colleges she contacted. The complainant worked for that year, reapplied to university and was accepted for the following September. It was the PSSB's position that a child of a deceased contributor to the Public Service Superannuation Board who takes a break in his/her education is ineligible for reinstatement of a Survivor's Benefit.

In the course of our investigation, we were advised that the PSSB sometimes made exceptions to its policy, but that it did not believe this complainant's circumstances were covered by any of the noted exceptions. The Ombudsman's subsequent letter to the Board again reviewed the facts and advised that the complainant's situation of commencing her studies in the next available semester when her desired course was overbooked was in fact within the Board's noted exceptions to its policy.

The Chairman of the PSSB responded that the Board was willing to retroactively reinstate the complainant's benefits in light of our findings.

Sometimes the Ombudsman must advise a Minister and the Premier of his decisions with respect to complaints he has supported before the governmental organization takes action to implement his recommendation.

SUMMARY NO. 5

We received two different complaints concerning decisions of the Teachers' Superannuation Commission (TSC) to deny personal representatives the right to apply for unpaid pension benefits. In the first case, the contributor had been a teacher for only a short time during his working years and once he retired, he did not apply for the pension to which he had contributed. Upon his death his spouse, who was executrix of his estate, attempted to collect his benefit, but the TSC denied her request stating that the contributor had failed to apply for a pension before his death and she could not do so now.

Similarly, another complainant advised us that the TSC would not allow him, as executor of his mother's estate, to apply for the one month's survivor's benefits to which she was entitled. His mother died within one month of the TSC pensioner, but because she did not return a signed application for benefits prior to her death, the TSC would not accept our complainant's application on behalf of his mother's estate.

The *Teachers' Superannuation Act, 1983* states that an allowance shall be paid only after the Commission receives an application. The Commission interpreted that such application must be completed by the contributor, a committee or a person with power of attorney. The Ombudsman advised the Commission that in his view the legislation and the format prescribed by regulation made no such distinction between the type of applications which would be accepted from persons other than the contributor and those which would not.

Additionally, the Commission argued that an allowance ends at death and actuarial assessments of the Fund do not include the additional cost of benefits payable for which application is not made. In the Ombudsman's view these cases did not concern future payments but payments to the deceased's estate of a debt due but as yet unpaid. The Ombudsman advised the Commission that the Ombudsman considered the Fund to have been unjustly enriched by retaining the contributors' entitlement, since actuarial assessments would be based on payments made at age 65 until death.

It was the Ombudsman's final conclusion and recommendation that the Commission's decisions in these cases were unjust and payment ought to be made. After the Ombudsman had advised the Minister of Education and the Premier of his position, the Commission notified him that it would accept his recommendation that these monies be paid to the complainants, with interest.

Often the Ombudsman resolves a complaint at a preliminary stage of the investigation. In this case, the complainant was satisfied with the Public Trustee's reply to our notice of intention to investigate.

SUMMARY NO. 6

The complainant's father was admitted to a psychiatric institution and a Certificate of Incompetence was issued and received by the Public Trustee. On her father's behalf the complainant contended that the Public Trustee delayed redirecting mail for six months; failed to ensure that her father's home was insured; did not maintain the upkeep of her father's home and did not respond to her inquiries or inform her about its toll-free number and, consequently, she incurred a number of long distance charges.

In response to our notification the Public Trustee's office indicated that the complainant's father's mail was not redirected until an investigative report was received and the full circumstances of the case were fully known. We were advised that the house was insured by an insurance company and at no time was the property left without coverage. Further, it was the patient who allowed the property to go into complete disrepair because he did not wish to spend money on repairs. It was therefore in extremely poor condition prior to the Public Trustee's involvement. Three estimates for emergency repair of the roof were submitted and considered by the Public Trustee and the complainant was authorized to go ahead with the repairs. Finally, the Public Trustee's office offered to reimburse her for the long-distance telephone calls and explained that although there is a toll-free number available, the line is always busy and therefore the number is not frequently given out. The toll-free number has since been increased to two lines.

The complainant was satisfied with the Public Trustee's response and considered her complaints to be resolved.

A thorough review conducted with the Public Trustee resulted in his making some adjustments in his administration of a psychiatric patient's estate.

SUMMARY NO. 7

The complainant initially contacted our Office about the difficulties she was encountering with the Office of the Public Trustee. She indicated that although she held a valid power of attorney executed by her husband, now a psychiatric patient who had been declared mentally incompetent, the Trustee had assumed management of her husband's estate. Consequently, she was of the view that the Trustee had acted unreasonably and further she alleged that the Trustee had been unreasonable in failing to provide adequate support to her and her sons.

In the course of our investigation a personal meeting was held with the Chief Accounts Officer of the Public Trustee's Office and the entire circumstances of the matter were reviewed. Following that review our Office was advised that the Trustee agreed to pay support for the complainant's sons and would waive any administrative fee with regard to its administration of the complainant's husband's estate.

That action would enable a larger portion of his estate to be paid in the form of support. During the investigation the complainant also informed us that she had retained a lawyer to act on her behalf with the Public Trustee. As it appeared the matters which had been originally brought to our attention were to be resolved amicably and the complainant had retained counsel, it appeared no further action by this Office was required and the file was accordingly closed. The complainant was invited to contact us again should the need arise.

The Public Trustee's demands for proof from an heir were considered unnecessarily legalistic.

SUMMARY NO. 8

The complainant contacted our Office to complain about the administration of the estate of her late father by the Public Trustee. She indicated that although her parents had never married, documentary evidence apparently existed to the effect that she was the only heir of her father. That documentation had been submitted to the Public Trustee; the Trustee, however, refused to recognize her claim to the estate.

Our investigation revealed that the Official Guardian of Ontario had also been involved in this matter in representing the complainant's interest, since she was a minor. It was determined that the Public Trustee had informed the Official Guardian that he would not pay out the proceeds of the estate to the complainant without a court order authorizing the payment. It was the Official Guardian's view that the Trustee was taking an unreasonably rigid position in light of the documentary evidence available to establish the claim and in light of the fact that the legal fees involved in such a court application would in all likelihood exhaust the assets of the estate. While negotiations between the two offices had continued for a number of months, they had not produced a satisfactory resolution.

During our investigation we wrote to the Honourable Ian Scott, Attorney General, requesting that he invite a representative of both offices to meet with our Office in an attempt to resolve the matter. It was suggested that a court application be brought expeditiously to settle the dispute and, further, that both government offices waive any legal fees so as not to deplete the estate. This action on our part prompted continuing negotiations which were quite fruitful. It was agreed that the estate monies would be paid into court for the complainant's benefit, to be paid out to her upon obtaining the age of majority in the province of residency. Since the matter was successfully resolved in the complainant's favour, no further investigation was carried out.

Bringing together the right parties for effective negotiation was the way to resolve this pension complaint.

SUMMARY NO. 9

A teacher complained that the Teachers' Superannuation Commission had denied him an opportunity to purchase pension credits for a period in which he had participated in a position-sharing program, as set out in the Act.

After contacting our Office the Commission was notified of our intent to investigate this complaint. A preliminary review of the facts at the beginning of the investigation suggested there was merit to the teacher's complaint given that the necessary information had been submitted to the Commission by the required deadline. However, it appeared that an alternate approach might serve to assist this teacher in resolving his complaint. In that regard, we brought together the complainant with the Superannuated Teachers of Ontario (STO), a group of retired teachers, which was willing to raise the issue with the Commission. We subsequently learned that the Commission, on submissions from the STO, reconsidered its position and resolved the issue in the teacher's favour.

LAND USE/RESOURCES AND REVENUE

The Ombudsman believes that every measure should be taken to ensure that citizens actually receive letters sent by the government respecting their rights. In this case, a citizen's failure to meet certain legal requirements prevented the Ombudsman from supporting the complaint. However, the Ministry of Natural Resources agreed with our recommendation that the relevant legislation should be changed to ensure that citizens receive notices intended for them.

SUMMARY NO. 10

In 1975, the complainant inherited from her sister an unregistered two-thirds interest in an undeveloped property. Prior to her death the sister had not registered her interest in the property which she had previously inherited from her husband.

The Ministry of Natural Resources did not receive payment for the 1980 and 1981 acreage taxes for this property. In accordance with provisions of the *Mining Act*, the Ministry initiated action to recover these unpaid taxes through the sale of the mining rights to the property. Since the complainant's two-thirds' interest had never been registered at the Provincial Land Registry Office, the Ministry was unaware of her interest in the property when the notices of pending forfeiture were sent to the apparent owners by registered mail.

The mining rights to this property were forfeited to the Crown on January 1, 1983, and a company later obtained possession of them by staking a claim. The complainant was dissatisfied that the Ministry had not advised her of the pending mining rights forfeiture and she also felt that the Ministry had not conducted an adequate search to determine the true owners of the property. She noted that she had been paying property taxes for this land since 1975.

The Ombudsman was unable to support the complaint on the grounds that the onus of registering her interest in the property at the Provincial Land Registry Office rested with the complainant. Since the Ministry had no way of knowing that she had an interest in the property, the Ombudsman could not find the actions of the Ministry unreasonable.

In the course of the investigation, the Ombudsman discovered that, if any of the notices of pending forfeiture sent by registered mail had been returned as undeliverable, the complainant would likely have been advised of the pending forfeiture. The registered mail system does not provide the sender with a record of delivery, while the certified mail system does. As the mailing addresses of registered owners shown on the Land Registry Office records are often outdated or incomplete, the Ombudsman felt that the Ministry should send notices of pending mining rights forfeitures by certified mail, rather than by registered mail.

The Ministry agreed to an amendment to the *Mining Act* to allow for the use of certified mail, and was also willing to institute a formal procedure with respect to returned notices.

While the Ombudsman could not assist the complainant directly, he was able to initiate changes in the legislation and the procedures to ensure that a similar situation would be unlikely to recur in the future.

Sometimes, in the course of an investigation, the Ombudsman will decide that in light of the circumstances he should discontinue his investigation. In this case, the Ombudsman learned that the Ministry's position might be altered by the results of a research project which was in progress. The Ombudsman decided to stop the investigation, but invited the complainant to contact him again if he remained dissatisfied with the Ministry's position after it had reviewed the research results.

SUMMARY NO. 11

The complainant, who held a licence to harvest wild rice from lakes in Northern Ontario, complained that the Ministry of Natural Resources was unreasonable in prohibiting him from applying fertilizers to the lakes to increase their production of wild rice.

The investigation revealed that the Ministry's position was based on advice from the Ministry of the Environment that fertilizers in natural water systems are considered to be pollutants, and their application to natural water bodies is contrary to the laws of Ontario.

We contacted a representative of the Ministry of the Environment, who confirmed that provincial policies, such as the Provincial Water Quality Objectives, have been set toward the removal of nutrients from natural water bodies, as high nutrient loading will result in algal blooms, oxygen depletion and fish kills. The representative explained that, within the past ten years, several states in the United States had started producing wild rice and higher production rates there meant that they could market wild rice more inexpensively than in Ontario. To address this problem, the Ministry of Northern Affairs and Mines has funded research into methods of enhancing the production of wild rice in Northern Ontario. The Ministry of the Environment representative felt that his Ministry would not likely support legislative changes which would permit pollution caused by fertilization of wild rice lakes. If, however, research proved that there were no adverse environmental consequences as a result of nutrient addition, he felt the Ministry would have no concerns. He also reported that, prior to permitting the commercial use of fertilizers on lakes, the issue would be scrutinized under the *Environmental Assessment Act*.

We discussed the research project further with a wild-rice biologist with the Ministry of Natural Resources who reported that research into the use of fertilizers in the natural environment was being done by a professor at a Northern Ontario university. The research initially started with an examination of the nutrients required by wild rice plants. Natural background levels of nutrients in lakes where wild rice is naturally found were established, and, from this, methods for gauging other lakes for their potential for wild rice production were examined. An evaluation of lakes deficient in nutrients and their potential for improvement through the use of fertilizers had been done on a small scale and with some success, but the Ministry of Natural Resources recognized that there is great concern about the effects of nutrient addition to the environment and ecology of the lakes. We were informed that the research would continue, to determine the required rate of application of fertilizers, the form of application, the fate of the nutrients in the natural environment, and their effect on the environment. The Ministry representative pointed out that, even if it is determined that there is no adverse environmental impact from the addition of fertilizers to natural water bodies, the research must be repeated several times to confirm whether the results are absolute and predictable.

The professor in charge of the research project confirmed the information provided by the Ministry and provided further details of his research project. He hoped that within the next few years he would have enough information gathered to approach the Ministry of the Environment and have it review the proposal for the commercial use of fertilizers for wild rice lakes. The professor offered to meet with our complainant to discuss his research work and to inspect the complainant's lakes to assess whether nutrient addition would be of any benefit. He also suggested that possibly the complainant's lakes could be included in his experiments.

In light of the concerns raised by the Ministry of the Environment respecting the potential for pollution through the addition of fertilizers to lakes, and given that the research into this issue had not been completed, we felt we could not provide further assistance to the complainant. We invited him to contact the professor responsible for the research project and suggested he contact us again, if he is dissatisfied with the position taken by either the Ministry of Natural Resources or the Ministry of the Environment once the research has been completed and reviewed by the Ministry of the Environment.

In some cases a complainant may satisfy existing licensing requirements but a change in those requirements may make him unable to meet the new ones. In the following case, the complainant's livelihood was threatened when new legislation was introduced, but the Ministry accepted the Ombudsman's representations and gave the complainant the opportunity to demonstrate his competence.

SUMMARY NO. 12

In 1986, the complainant applied to the Ministry of Transportation for a class "D" truck driver's licence. The Ministry refused because he did not meet the vision standards. The complainant believed that the Ministry's decision was made in accordance with a regulation which was unjust and improperly discriminatory toward the visually impaired and that he should be given the opportunity to demonstrate that he could drive safely.

The complainant had previous experience in driving large trucks, and, had he applied for a "D" licence before 1977 or during the one-year transition period after the Ministry had changed to the new classified driver licence system in January, 1977, his application would have been considered. In 1984, the licence system regulations were amended to give some applicants with medical disabilities an opportunity to show that their health did not impair their safe driving ability. The amendment did not extend this benefit to the visually impaired. The Ombudsman had previously investigated complaints about the new licensing health requirements and had not found them to be improperly discriminatory.

In this case, however, the Ombudsman was able to supply the Ministry with medical documentation showing that this driver's eye condition pre-dated the introduction of the new system in 1977. The Ministry reviewed his driving record and experience, medical and vision reports. The result was that the Ministry waived the vision-standard requirements, and the complainant qualified for a "D" licence.

Negotiation is sometimes the most effective tool in resolving a complaint. In the following case, the Ombudsman was able to mediate a resolution by clearing the lines of communication between the local Housing Authority and the complainant.

SUMMARY NO. 13

The complainant requested our assistance in obtaining from the local Housing Authority a transfer from a three-bedroom to a four-bedroom house. It was established that the complainant, her husband and their five children were inadequately housed in their three-bedroom unit. Discussion with Housing Authority personnel confirmed that an earlier transfer had been denied because the family had failed to keep the backyard clear of wrecked cars and other debris.

The denial was an attempt by the Housing Authority to assist the family to become more responsible tenants, as the Authority had received complaints from the neighbours about the state of the yard. The complainant, however, indicated that the yard had been recently kept clean. This information was communicated to the Authority and the complaint was resolved when the family was moved into a four-bedroom unit which more adequately housed them.

LABOUR AND PSYCHIATRIC INSTITUTIONS

Old is not necessarily infirm. The Ombudsman persuaded the Ministry of Government Services to offer a healthy and active 66-year-old worker a one-year contract to increase his length of service.

SUMMARY NO. 14

The complainant, employed by the Ministry of Government Services, had a note from his physician on his personnel file stating that he had had surgery and should do no heavy lifting; otherwise the complainant was healthy. Before retirement, he asked if he could work past the age of 65 to increase his length of service. When his request was refused, his lawyer wrote that he enjoyed robust vigorous health, and his physician wrote that he was mentally and physically fit for work.

The Ministry drafted a memorandum of settlement in which our complainant was offered two years' employment, conditional upon his health and work performance remaining satisfactory. The worker wrote to the Ministry, pointing out that his surgery was necessitated by the heavy lifting he had done at work, and that his supervisor had assigned him light work. He asked that his medical limitations be kept in mind when he was assigned to a new job.

The Ministry compared the reports of the lawyer and the physician with the complainant's letter, and concluded that his health was not satisfactory. It called the memorandum of settlement null and void.

After the worker complained to this Office, the Ombudsman wrote to the Ministry to advise of our tentative conclusion that it had been unreasonable to treat the memorandum of settlement as null and void on the basis that the complainant's health was not satisfactory. In support of our position, we wrote that the reports from the lawyer and the physician attesting to the complainant's health and fitness were not the only pieces of evidence available to the Ministry when the memorandum was drafted; the personnel file contained a note proscribing heavy lifting, and the supervisor confirmed that a job which did not require heavy lifting had been assigned two years earlier. We wrote that it did not seem fair for the Ministry to expect a man to do at 66 what it had agreed he could not do at 64. The Ombudsman tentatively recommended that the Ministry offer the complainant employment for a period of not more than two years in a job that did not require heavy lifting.

After further discussion with our Office, the Ministry offered the complainant a one-year contract position which he accepted.

In this case, the Ombudsman persuaded the Workers' Compensation Board to grant entitlement for surgery which occurred almost 20 years after the original injury.

SUMMARY NO. 15

In 1959, the worker commenced employment as a dairy route salesman, a job which involved jumping in and out of a truck to make approximately 200 milk deliveries per day. In December, 1961, the worker slipped on ice and struck both legs on an iron bar on his truck. He suffered severe haemorrhaging in both legs and lacerated both shins. He lost no time from work. However, sometime after October, 1979, the worker laid off work and right knee surgery was performed, on three separate occasions. The worker requested benefits for his lost time and the resulting surgery. However, the diagnosis then was severe osteoarthritis and the Board denied him benefits. The Board's reasons were that there was an absence of medical continuity of the right knee between 1961 and 1979; the diagnosis was degenerative disease of the right knee; the evidence did not establish specific incidents between 1961 and 1979 which might have given rise to the disability in 1979, nor disablement arising out of the employment.

The worker's family physician consistently maintained that a relationship existed between the worker's right knee disability and his 1961 accident. The attending orthopaedic surgeon related the right knee disability to the worker's employment. A Board surgical consultant noted there was evidence to suggest that a crack fracture might have occurred at the time of the original accident and he felt that a tenuous case could be made for accepting a causal relationship between the right knee disability and the worker's employment. Only one Board physician was of the view that the worker's knee problems were not related to his compensable accident. On the strength of the medical opinions expressed by the worker's physicians and the Board's surgical consultant, the Ombudsman tentatively concluded that the Appeal Board should have accepted the preponderance of medical opinion and granted the worker entitlement for his right knee disability as being causally related to his December, 1961 compensable accident. The Ombudsman found it unreasonable for the Appeal Board not to have considered the worker's 20-year work history as a driver/salesman.

Following the issuance of the Ombudsman's final report, the Board accepted that the preponderance of medical opinion supported a causal relationship between the right knee disability and the work performed. The worker was granted entitlement for his right knee disability as being causally related to the December 1961 accident based on disablement arising out of and in the course of his employment. He received compensation benefits for his lost time commencing in October, 1979.

Continuity of complaint is often a contentious issue. In this instance, the worker was granted entitlement for benefits in 1984 as a result of a 1977 injury.

SUMMARY NO. 16

A worker suffered an acute lumbar sprain in July, 1977 when he picked up a heavy load. He continued to have back pain and saw four physicians between 1977 and 1984. His pharmacist stated that he required pain medication every three months between 1980 and 1984. X-rays revealed degenerative changes in the spine.

In February, 1984 the worker had a flare-up of back pain which necessitated a two-week layoff. During a Board investigation it was learned that he had lost no time since 1977, although his foreman confirmed that he occasionally complained of pain over the years. The worker was examined by an orthopaedic surgeon who reported that he probably had a degenerative disc and facet joint arthritis. The Board denied entitlement to benefits on the grounds that there had been minimal medical attention between 1980 and 1984; there was no new accident in 1984; and a Board physician saw no relationship between a soft tissue injury in 1977 and back problems in 1984.

After the worker complained to this Office, the Ombudsman wrote to the Board to advise of our possible conclusion that the Appeal Board decision had been unreasonable, and our possible recommendation that the Workers' Compensation Board should acknowledge the worker's ongoing disability as related to his 1977 accident, and grant him benefits.

The Committee to Review Appeal Board Decisions reviewed the evidence and concluded that the 1977 injury aggravated the worker's pre-existing degenerative disc disease. Accordingly, the weight and preponderance of medical reporting supported a causal relationship between the worker's recurring symptoms of back disability and his 1977 injury. The Board agreed to pay temporary total disability benefits for the two-week layoff in 1984.

When faced with conflicting psychiatric reports, the Ombudsman generally gives special consideration to the treating psychiatrist's report.

SUMMARY NO. 17

The worker had been employed for 11 years as a shear operator at a scrap metal company. On January 5, 1977 a large piece of metal slipped from the worker's cutting machine and struck him on the right side of the jaw, knocking him against the wall of the shear shack and some stairs. The worker, age 55, lost consciousness briefly and incurred injuries to his right jaw, neck and low back.

Following his discharge from the Workers' Compensation Rehabilitation Centre in February, 1978, the worker was considered unable to return to his previous employment and the assistance of the Vocational Rehabilitation Department was provided. However, due to the worker's age and lack of English-language skills, he was unsuccessful in finding work. In addition, the worker began to suffer from a substantial psychological problem which his doctors believed had been precipitated by his compensable accident.

Problems in communication, complicated by the worker's emotional distress, led to delays in his being fully assessed by the Workers' Compensation Board. Eventually, in May, 1981 the Board's Rating Committee on Major Psychogenic Disabilities examined the worker. Contrary to previously expressed psychiatric opinions, the Board's psychiatrist did not find any evidence of a significant psychiatric disorder. As well, the Rating Committee failed to find sufficient evidence of an organic disability to warrant a permanent disability award. The worker was advised that his benefits would be terminated in June, 1981.

The worker appealed the Board's decision; however, it was not until two years after his benefits had been terminated that proper medical tests confirmed that there was, indeed, an organic basis for his symptoms. Studies revealed evidence of sensory and motor denervation in the worker's left arm, greater than that which would be expected due to aging.

On the basis of this evidence, the Appeal Board directed the Rating Committee to review the worker's condition. A 10% permanent disability award was recommended as compensation for the worker's organic disability. However, the Board's psychiatrist again concluded that the worker did not have a psychological disability. In its decision dated January 6, 1984, the Appeal Board concluded that the medical evidence did not support total disability subsequent to June, 1981 and that the residual psychiatric disability, if any, was insufficient to warrant an award. The worker was granted a 10% pension with arrears to June, 1981.

During the course of the Ombudsman's investigation, it appeared that the worker might be eligible to receive an older worker's supplement under section 45(7) of the *Workers' Compensation Act*. Accordingly, the Board was contacted, asked to consider the worker's entitlement to this supplement, and provided with reasons for the request. The Board's pensions section reviewed the worker's file and the supplement was granted.

Regarding the worker's claim for temporary total benefits subsequent to June, 1981, the investigation revealed that the medical evidence did not support the worker's claim of total disability after this date.

On the issue of psychological entitlement, every doctor who had examined the worker, with the exception of the Board's psychiatrist, had noted that he had a definite psychological problem. The worker's family also provided evidence of great changes in his behaviour since the 1977 accident. As the balance of medical evidence appeared, overwhelmingly, to support the existence of a psychological disability, the Ombudsman was of the opinion that the Board had been wrong to have accepted the opinion of its own psychiatrist which was, by his own admission, contrary to that of all the other doctors. The weight and preponderance of medical evidence clearly appeared to establish entitlement to compensation for a rateable psychological disability.

It was also noted that, medically, there had been some difficulty in establishing the proper diagnosis for the worker's organic problem. As well, there was a great deal of variance in the medical opinions expressed. It was, therefore, recommended that the worker's physical disability should be reassessed.

Following the issuance of the Ombudsman's final report, the Board recognized that the worker did have a psychological disability attributable to his compensable accident. The worker was reassessed and granted a 10% retroactive permanent disability award for this psychological disability. After thoroughly reviewing the medical evidence on file, the Board concluded that a physical reassessment was not warranted as the worker's physical condition had been static for some time. The Ombudsman accepted that the award of the older worker's supplement was a reasonable alternative to the recommendation that the organic disability be reassessed.

Statistical Information

Statistical Information

COMPLAINTS & INFORMATION REQUESTS BY ORGANIZATION FISCAL YEAR 1987/1988 WITH COMPARATIVE NUMBERS

ORGANIZATION COMPLAINED AGAINST	WITHIN JURISDICTION		OUTSIDE JURISDICTION		INFORMATION REQUESTS		TOTAL	
	1987/88	1986/87	1987/88	1986/87	1987/88	1986/87	1987/88	1986/87
AGRICULTURE & FOOD	23	27	33	29	10	10	66	66
ATTORNEY GENERAL	33	42	169	77	73	37	275	156
Ontario Municipal Board	34	26	39	35	11	9	84	70
Public Trustee	24	23	28	15	21	15	73	53
TOTAL ATTORNEY GENERAL	91	91	236	127	105	61	432	279
CITIZENSHIP				7	1	3	1	10
Human Rights Commission	35	48	59	51	49	24	143	123
TOTAL CITIZENSHIP	35	48	59	58	50	27	144	133
COLLEGES & UNIVERSITIES	31	24	167	109	32	17	230	150
COMMUNITY & SOCIAL SERVICES	138	139	442	304	109	64	689	507
Social Assistance Review Board	57	36	50	33	19	6	126	75
TOTAL COMMUNITY & SOCIAL SERVICES	195	175	492	337	128	70	815	582
CONSUMER & COMMERCIAL RELATIONS	67	84	205	111	77	45	349	240
CORRECTIONAL SERVICES	94	145	159	59	46	16	299	220
Correctional Centres	659	891	556	71	41	14	1256	976
Detention Centres	1265	1759	706	104	53	34	2024	1897
Jails	973	1568	393	70	46	33	1412	1671
TOTAL CORRECTIONAL SERVICES	2991	4363	1814	304	186	97	4991	4764
CULTURE & COMMUNICATIONS	8	3	9	1	2	1	19	5
EDUCATION	32	39	33	30	11	5	76	74
Teachers' Superannuation Commission	38	21	8	7	8	8	54	36
TOTAL EDUCATION	70	60	41	37	19	13	130	110
ENERGY	3		3	2		2	6	4
Ontario Hydro	12	16	54	42	15	14	81	72
TOTAL ENERGY	15	16	57	44	15	16	87	76
ENVIRONMENT	36	11	52	47	14	11	102	69
FINANCIAL INSTITUTIONS	179	28	94	31	27	17	300	76
GOVERNMENT SERVICES	37	18	27	23	19	15	83	56
Ontario Land Corporation	1	2	1	4		1	2	7
TOTAL GOVERNMENT SERVICES	38	20	28	27	19	16	85	63
HEALTH	69	45	115	88	39	14	223	147
Psychiatric Hospitals	96	183	122	43	63	18	281	244
O.H.I.P.	15	17	98	68	40	19	153	104
TOTAL HEALTH	180	245	335	199	142	51	657	495
HOUSING	88	68	245	158	100	84	433	310
Ontario Housing Corp.	3	6	14	26	8	8	25	40
TOTAL HOUSING	91	74	259	184	108	92	458	350
INDUSTRY, TRADE & TECHNOLOGY	6	2	13	4	6	3	25	9
LABOUR	97	70	164	91	103	55	364	216
Workers' Compensation Board	92	352	986	687	524	539	1602	1578
TOTAL LABOUR	189	422	1150	778	627	594	1966	1794
MUNICIPAL AFFAIRS	18	16	33	19	8	2	59	37
Municipal Employees Retirement Board	5	1	4	6	2	2	11	9
TOTAL MUNICIPAL AFFAIRS	23	17	37	25	10	4	70	46
NATURAL RESOURCES	90	48	98	50	18	10	206	108
NORTHERN DEVELOPMENT & MINES	9	2	16	5	8	4	33	11
REVENUE	41	40	95	66	22	15	158	121
SKILLS DEVELOPMENT	5	5	13	12	9	2	27	19
SOLICITOR GENERAL	44	25	148	86	27	23	219	134
TOURISM & RECREATION	10	12	19	14	8	5	37	31
TRANSPORTATION	96	49	205	168	44	35	345	252
TREASURY & ECONOMICS	0	4	1	1	0	0	1	5
ONTARIO GOVERNMENT OTHER	9	2	42	27	271	156	322	185
TOTAL ONTARIO GOVERNMENT	4572	5897	5718	2881	1984	1395	12274	10173
COURTS AND JUDGES	0	0	412	336	45	46	457	382
FEDERAL	0	0	1233	947	223	188	1456	1135
PRIVATE	0	0	4021	3196	1005	691	5026	3887
MUNICIPAL	0	0	1408	959	150	96	1558	1055
INTERNATIONAL	0	0	10	7	9	3	19	10
OTHER PROVINCES	0	0	77	46	39	25	116	71
NO ORGANIZATION SPECIFIED	0	0	18	52	249	561	267	613
TOTAL	4572	5897	12897	8424	3704	3005	21173	17326

Statistical Information

DISPOSITION OF JURISDICTIONAL COMPLAINTS FOR FISCAL YEAR 1987/88

ORGANIZATION COMPLAINED AGAINST	COMPLAINT SUPPORTED						COMPLAINANT ASSISTED		INDEPEN- DENTLY RESOLVED		UNSUB- STANTIATED	
	NO RECOM- MENDATION		FORMAL RECOMMENDATION ACCEPTED		DENIED							
	1987/88	1986/87	1987/88	1986/87	1987/88	1986/87	1987/88	1986/87	1987/88	1986/87	1987/88	1986/87
AGRICULTURE & FOOD	0	0	0	1	0	3	2	3	0	1	12	19
ATTORNEY GENERAL			2	4			6	6	2	3	10	7
Ontario Municipal Board				2			8	5				
Public Trustee						4	11	5	2		3	
TOTAL ATTORNEY GENERAL	0	0	2	6	0	4	25	16	4	3	20	
CITIZENSHIP												
Human Rights Commission	2	3					2	1	2		18	
TOTAL CITIZENSHIP	2	3	0	0	0	0	2	1	2	0	18	
COLLEGES & UNIVERSITIES	0	0	0	0	0	0	12	8	1	1	4	
COMMUNITY & SOCIAL SERVICES		1	1	2			24	19	7	8	17	
Social Assistance Review Board				2			17	6	4	1	14	
TOTAL COMMUNITY & SOCIAL SERVICES	0	1	1	4	0	4	41	25	11	9	31	
CONSUMER & COMMERCIAL RELATIONS	0	0	0	1	0	1	15	14	1	0	17	
CORRECTIONAL SERVICES							4	8	5	16	4	
Correctional Centres				4			50	65	48	49	5	
Detention Centres		1				2	102	133	61	82	4	
Jails							81	88	67	78	3	
TOTAL CORRECTIONAL SERVICES	0	1	0	4	0	2	237	294	181	225	16	
CULTURE & COMMUNICATIONS	0	0	0	0	0	0	2	0	0	0	3	
EDUCATION		1				9	14	3	2		11	
Teachers' Superannuation Com.			2	1			1	5	1		13	
TOTAL EDUCATION	0	1	2	1	0	9	15	8	3	0	24	
ENERGY												
Ontario Hydro							3	7			3	
TOTAL ENERGY	0	0	0	0	0	0	3	7	0	0	3	
ENVIRONMENT	0	0	0	0	0	0	7	5	1	0	9	
FINANCIAL INSTITUTIONS	0	0	0	0	0	4	9	3	1	0	4	
GOVERNMENT SERVICES							9	8			6	
Ontario Land Corporation								1			1	
TOTAL GOVERNMENT SERVICES	0	0	0	0	0	0	9	9	0	0	7	
HEALTH	1			7	2	2	7	4		1	21	
Psychiatric Hospitals			1				14	5	10	12	14	
O.H.I.P.		1				1	1	2		1	5	
TOTAL HEALTH	1	1	1	7	2	3	22	11	10	14	40	
HOUSING	1				1		24	22	2	4	13	
Ontario Housing Corp.							1	3				
TOTAL HOUSING	1	0	0	0	1	0	25	25	2	4	13	
INDUSTRY, TRADE & TECHNOLOGY	0	0	0	0	0	0	0	0	0	0	1	
LABOUR							11	11		4	57	
Workers' Compensation Board		1	14	74	3	16	12	55		5	25	
TOTAL LABOUR	0	1	14	74	3	16	23	66	0	9	82	
MUNICIPAL AFFAIRS			1				2	3			1	
Municipal Employees Retirement Board							1				2	
TOTAL MUNICIPAL AFFAIRS	0	0	1	0	0	0	3	3	0	0	3	
NATURAL RESOURCES	0	1	1	1	0	0	15	16	1	1	21	
NORTHERN DEVELOPMENT & MINES	0	0	0	0	0	0	1	1	0	1	3	
REVENUE	0	0	0	2	0	0	7	6	0	0	5	
SKILLS DEVELOPMENT	0	0	0	0	0	0	3	2	0	0	0	
SOLICITOR GENERAL	0	0	1	0	0	0	3	4	0	1	7	
TOURISM & RECREATION	0	0	0	0	0	0	3	5	1	0	2	
TRANSPORTATION	0	0	0	0	0	0	20	15	1	1	19	
TREASURY & ECONOMICS	0	0	0	1	0	0	0	1	0	0	0	
ONTARIO GOVERNMENT OTHER	0	0	1	0	0	0	1	0	0	0	1	
TOTAL ONTARIO GOVERNMENT	4	9	24	102	6	46	505	548	220	270	365	

8 WITH COMPARATIVE NUMBERS

INVESTIGATION DISCONTINUED ABANDONED WITHDRAWN SECTION 18						TOTAL	
7/88	1986/87	1987/88	1986/87	1987/88	1986/87	1987/88	1986/87
1	2	4	3	4	4	23	27
2	1	2	14	9	5	33	42
1		5	1	13	7	34	26
2	1	3	3	3	7	24	23
5	2	10	18	25	19	91	91
3	1	1	9	7	15	35	48
3	1	1	9	7	15	35	48
6	2	1	6	7	5	31	24
5	13	26	41	58	35	138	139
3	1	4	1	15	7	57	36
8	14	30	42	73	42	195	175
9	5	6	13	19	37	67	84
25	42	18	48	38	30	94	145
95	199	166	311	295	260	659	891
29	458	256	517	613	561	1265	1759
03	432	145	308	474	656	973	1568
52	1131	585	1184	1420	1507	2991	4363
0	0	1	2	2	0	8	3
1	1	1	4	3	6	32	39
1		1	3	19	11	38	21
2	1	2	7	22	17	70	60
		3	3	3	4	12	16
0	0	3	3	6	4	15	16
2	0	9	1	8	3	36	11
2	1	5	3	158	11	179	28
3		2	1	17	4	37	18
3	0	2	1	17	1	1	2
					5	38	20
4	2	10	7	24	9	69	45
21	29	19	60	17	73	96	183
1	1	3	1	5	6	15	17
26	32	32	68	46	88	180	245
7	6	23	18	17	14	88	68
1		1	2		1	3	6
8	6	24	20	17	15	91	74
0	0	4	1	1	1	6	2
3		10	18	16	27	97	70
4	3	6	24	28	77	92	352
7	3	16	42	44	104	189	422
3	3	3	6	8	3	18	16
3		1		1	1	5	1
3	3	4	6	9	4	23	17
9	3	29	22	14	3	90	48
0	0	2	0	3	0	9	2
3	1	10	11	16	13	41	40
1	1	0	0	1	1	5	5
6	1	10	5	17	13	44	25
1	1	1	2	2	1	10	12
7	4	19	14	30	10	96	49
0	0	0	1	0	0	0	4
0	0	2	0	4	2	9	2
64	1214	812	1484	1972	1924	4572	5897

GLOSSARY

COMPLAINT SUPPORTED

NO RECOMMENDATION — At times the Ombudsman will support a complaint but decide no recommendation is appropriate given all the circumstances.

FORMAL RECOMMENDATION ACCEPTED — Those complaints where the governmental organization agrees to implement the Ombudsman's recommendation.

FORMAL RECOMMENDATION DENIED — Those complaints where the governmental organization refuses to implement the Ombudsman's recommendation.

COMPLAINANT ASSISTED — Those complaints where the Ombudsman renders assistance and usually involve tangible corrective action taken by the governmental organization.

INDEPENDENTLY RESOLVED — Many complaints are resolved independent of the Ombudsman's involvement. This can occur at any point in the investigative process prior to the Ombudsman issuing a final report.

UNSUBSTANTIATED — Those complaints where the Ombudsman's investigation reveals no grounds to support the complainant's contention.

INVESTIGATION DISCONTINUED — The Ombudsman uses his discretion to discontinue an investigation at any point prior to issuing a final report for a number of reasons:

ABANDONED — Attempts to communicate with the complainant are unsuccessful (e.g., complaints from inmates of correctional facilities who are released in the course of our investigation and leave no forwarding address).

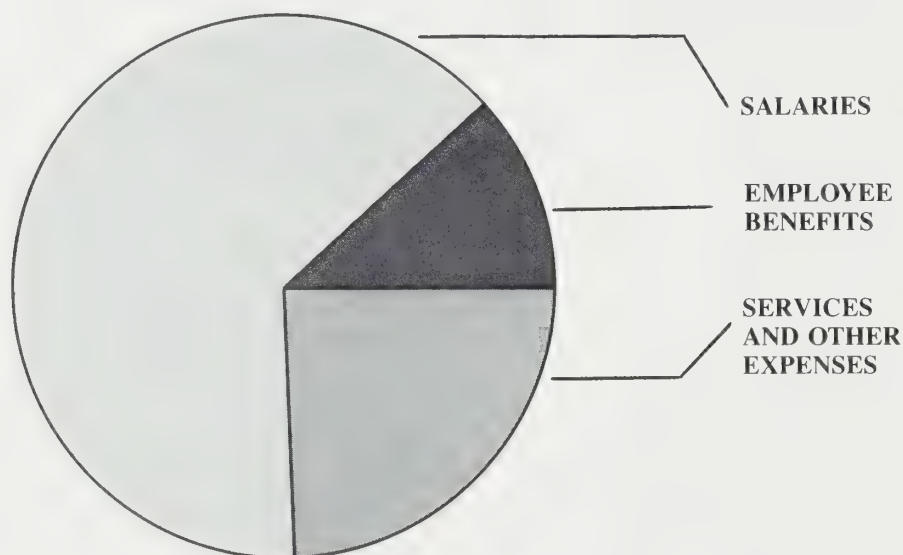
WITHDRAWN — At the request of the complainant. In many cases information is provided to the complainant and, although there is no resolution the complainant does not wish us to pursue the matter.

SECTION 18 — Refers to Section 18 of the **Ombudsman Act** which allows the Ombudsman the discretion to discontinue if, for example, there is an adequate alternative remedy or the complaint is frivolous or having regard to all the circumstances no further investigation is necessary.

Statistical Information

DISPOSITION OF NON-JURISDICTIONAL COMPLAINTS, INFORMATION REQUESTS/SUBMISSIONS FISCAL YEAR 1987/88, WITH COMPARATIVE NUMBERS

Organization	Information Provided		Inquiries Made/ Resolution Facilitated		No Action Possible		Total		Percent	
	1987/88	1986/87	1987/88	1986/87	1987/88	1986/87	1987/88	1986/87	1987/88	1986/87
Provincial	4827	2803	2512	1329	363	144	7702	4276	46.4	37.4
Private	4546	3524	386	306	94	57	5026	3887	30.3	34.0
Municipal	1250	844	280	195	28	16	1558	1055	9.4	9.2
Federal	1232	945	200	176	24	14	1456	1135	8.8	9.9
Courts & Judges	413	353	28	17	16	12	457	382	2.7	3.4
No Organization Specified	223	532	19	33	25	48	267	613	1.6	5.4
Other Provinces	98	57	17	13	1	1	116	71	0.7	0.6
International	14	9	4	0	1	1	19	10	0.1	0.1
TOTAL	12603	9067	3446	2069	552	293	16601	11429	100.0	100.0



ACTUAL EXPENDITURES FOR THE FISCAL YEAR 1987-88

Salaries	\$4,450,855	Security Services	50,605
Employee Benefits	659,997	Other Services	154,153
Travel & Relocation	135,892	Furniture & Office Equipment	29,981
Telephone, Mailing & Delivery	188,043	Office Supplies & Devices	42,322
Building Rent	580,761	Books & Publications	82,891
Equipment & Other Rentals	104,855	Other Supplies & Equipment	49,994
Professional Services	87,451		

TOTAL \$6,617,800

PART II

RECOMMENDATIONS DENIED

INTRODUCTION

Part II is devoted entirely to detailed summaries of cases where the recommendation of the Ombudsman was denied by the governmental organization.

Tables of recommendations outstanding from previous reports are included as appendices.

Detailed Summary No. 1

On November 6, 1985 the Ombudsman received a letter from Mr. A's daughter asking for an investigation into his complaint against an Appeal Board decision dated July 22, 1985. On November 28, 1985 the Workers' Compensation Board was notified of our intent to investigate Mr. A's contention that the Appeal Board was unreasonable to conclude that he was not entitled to temporary total disability benefits after January 6, 1983.

On January 18, 1982, Mr. A was moving heavy wheels and bases when he felt a sharp pain in the right side of his abdomen. Dr. B, his family physician, diagnosed muscle injury of the abdominal wall. The employer's report noted that he was "not used to the bases". Mr. A returned to light duty at work on February 4th, but was able to work only one day and laid off again. Dr. C, a general surgeon, saw Mr. A on February 26, 1982 and described him as still disabled. On March 29, 1982, Mr. A began attending physiotherapy where transcutaneous nerve stimulation treatments appeared to relieve his pain.

On June 8, 1982, Drs. D and E, Board physicians, examined Mr. A and noted tenderness to touch in the right side of the abdomen. They were of the opinion that Mr. A had sustained a muscle tear which was now healed and he should return to work without immediate heavy lifting. Mr. A returned to work on June 14th and worked for four days, but could not continue because of abdominal swelling and pain. The company nurse confirmed that his abdomen was swollen. Dr. C saw Mr. A again on September 9th and "urged him vigorously" to return to work on September 20th. On September 21st, Dr. B felt that Mr. A could not do his usual or modified work, and wrote that he might have a permanent weak muscle.

Mr. A returned to work on January 26, 1983, but was able to work only one day because of abdominal swelling and pain. Dr. B wrote to the Board on February 9, 1983 disagreeing with the decision to close the file, and asked for assessment of Mr. A's ability to work. The employer wrote to the Board on February 16, 1983 stating that Mr. A had tried to return to work several times, but on each occasion his abdomen swelled and he experienced much discomfort. The employer wrote further that the company physician, Dr. G, examined Mr. A and felt that he should be seen in Toronto.

Also on February 16, 1983, Dr. G spoke to Dr. F at the Board and was recorded as saying that he examined Mr. A but had found nothing. Dr. F reported that Dr. G thought benefits were restored, and he and the employer were unhappy. After speaking to Dr. G on February 23, 1983, Dr. E wrote that Mr. A's subjective discomfort was not supported by his own physical findings in June 1982, nor by those of Drs. C and G. He wrote further that the employer was chagrined because of the feeling that Mr. A was not as disabled as he claimed. Dr. E was of the opinion that the claim should not be reopened without "proper adequate written documentation of physical disability" since he did not consider Mr. A's subjective symptoms to be causally related to the January 1982 accident.

On March 31, 1983, Dr. H, a general surgeon, ordered a CT scan of Mr. A's abdomen which showed no abnormalities that would account for his continuing pain. Dr. H was of the opinion that Mr. A might have suffered a traction injury of an abdominal wall nerve resulting in a causalgia-like syndrome and requested tests to check his theory. Dr. J, an anaesthesiologist, found that the painful area was within the distribution of the right thoracic 9th, 10th and 11th nerves. With a block of those nerves on May 17, 1983, Mr. A's pain completely disappeared within 15 minutes and attempts to reproduce it were unsuccessful. Unfortunately, the pain relief lasted only briefly. A different drug was used on June 1, 1983 and this time Mr. A had four days' relief from pain, with some relief still evident on June 10th.

An Appeals Adjudicator hearing was held on August 16, 1983, after which a surgical consultant was asked to review Dr. J's report. Dr. E responded on October 3, 1983 that, even though Dr. J's report indicated a decrease in subjective symptoms after injection of the thoracic nerves, he did not consider Mr. A to be disabled after January 6, 1983, and reports after that date supported his position. On October 31, 1983, the Appeals Adjudicator accepted Dr. E's opinion and denied entitlement after January 6, 1983.

On September 1, 1983, Dr. B wrote that he did not know why Mr. A had persistent pain and he did not know the best treatment. He asked again for assessment by the Board. On November 25, 1983, Mr. A was seen by Dr. K, a specialist in internal medicine, who noted marked tenderness in the right abdomen and epigastric region, particularly over the costal cartilages of his 8th and 9th ribs. Dr. K was of the opinion that Mr. A must have suffered a haemorrhage into the abdominal wall muscles, and continued muscle spasm produced a persisting state of causalgia.

At an Appeal Board hearing on May 15, 1984, Mr. A's representative submitted a brief concluding that the benefit of doubt should be extended. The employer again noted that Mr. A tried to return to work three times, and continued to complain of pain in the abdomen.

Following the hearing, the Appeal Board directed that Mr. A be admitted to the Hospital and Rehabilitation Centre for assessment. Dr. L, a neurologist, examined Mr. A at the Centre on October 16, 1984 and felt that he suffered a ligamentous strain which had now become perpetuated beyond the normal healing period. Dr. L could find no underlying neurological cause for Mr. A's pain. On November 13, 1984, Dr. N, the Board's Coordinator of Paramedical Services, reported on an experimental test, a Compu-scan, which revealed abnormalities related to the spine. He wrote that similar changes in the right mid-lateral chest wall could correspond to the D-6 to 8 segments. Dr. O, a Board psychiatrist, examined Mr. A on November 14, 1984 and found intermittent mild depression related to inactivity, but no evidence of acute psychological disorder. Dr. O described Mr. A as well-motivated with regard to rehabilitation or return to work. The discharge diagnosis was neuralgic pain, right lower lateral chest wall.

On July 22, 1985, the Appeal Board found that Mr. A did not have a disability subsequent to January 6, 1983 related to his January 1982 accident. Accordingly, temporary total disability benefits after January 6, 1983 were denied.

During the course of our investigation I found I might conclude that the Appeal Board was unreasonable in denying Mr. A temporary total benefits after January 6, 1983. In a letter dated March 31, 1987 I advised the Honourable Robert G. Elgie, Chairman of the Workers' Compensation Board, of my possible conclusion and my consequent possible recommendation that the Appeal Board should revoke its decision and award Mr. A entitlement to benefits after January 6, 1983. The accident employer was also advised of my possible conclusion and recommendation.

In support of my position I noted the following. Prior to January 1982, Mr. A was well but, on January 18th, he was injured while moving heavy equipment. Since that time he appears to have had a continuing disability, demonstrated on three separate occasions when he returned to work but was incapable of performing even a light job and suffered a swollen abdomen, as attested to by his employer. Although Mr. A's condition was not diagnosed, most of the physicians involved in this case were of the opinion that he suffered a real and ongoing problem. Dr. B, his family physician, was baffled by the source of the disability but, nevertheless, felt that the compensable accident caused an unresolved problem. Dr. H, who did not dismiss Dr. B's concerns as unfounded, felt that the problem might be attributable to traction injury of a nerve and suggested nerve blocks to test his hypothesis. Dr. J's tests showed diminution of pain, supporting Dr. H's theory. Dr. K, also of the opinion that a physical problem existed, felt that it might be due to haemorrhage into the abdominal wall muscles with continued muscle spasm. Dr. L's description of a ligamentous strain prolonged beyond the normal healing period would indicate that he considered Mr. A had a problem remaining from his compensable accident. I also felt that the Compu-scan, although experimental, lent support to Mr. A's claim. Conversely, I noted that Drs. C, D and E were of the opinion that a lack of objective findings on examination meant that Mr. A had no ongoing disability attributable to his compensable accident.

I wrote in conclusion:

In weighing the evidence before me, it would appear that . . . the preponderance of evidence indicates that Mr. A suffered a work injury which has not resolved, although the physicians involved could not explain its physiological cause; and he should be compensated for it.

By September 9, 1987, neither the accident employer nor the Workers' Compensation Board had responded substantively to my March 31st letters, and I was of the opinion that a reasonable amount of time had passed for such an opportunity.

Before reaching a final conclusion in this case, I carefully considered all of the factors outlined in the letters in support of my possible conclusion and recommendation. Nothing had occurred to change my opinion that Mr. A should be compensated: he injured himself at work moving heavy wheels and bases; he was unable to return to work because pain and swelling disabled him when he attempted to do so;

and the preponderance of medical evidence supported his claim, in that while one specialist and two Board physicians felt that he had no ongoing disability attributable to his compensable accident, his family physician and four specialists accepted that he had an ongoing problem even though they were unable to diagnose his condition.

It was my opinion, pursuant to section 22(1)(b) of the *Ombudsman Act*, that the Appeal Board decision of July 22, 1985 was unreasonable to deny Mr. A entitlement to temporary total benefits after January 6, 1983. I recommended, therefore, pursuant to section 22(3)(g) of the *Ombudsman Act*, that the Board should revoke the July 22, 1985 Appeal Board decision and award Mr. A entitlement to benefits after January 6, 1983.

This recommendation was included in a report dated September 9, 1987 which was sent to the Chairman. The Board had not formally responded to the report and recommendation by March 17, 1988 although it had sought medical clarification. I therefore determined that a reasonable length of time had passed without appropriate action on the Board's part and reported the matter to the Premier. Mr. A was advised of the results of the investigation and the file was closed.

Detailed Summary No. 2

On July 22, 1986, Mr. BB, son of Mr. B, wrote to our Office and expressed dissatisfaction with an Appeal Board decision dated August 29, 1984. On August 5, 1986, we notified the Workers' Compensation Board of our intent to investigate Mr. BB's contention that the Appeal Board was unreasonable to conclude that his father's stress fracture of the left ulna did not arise out of and in the course of his employment.

On September 14, 1982 two co-workers, Mr. C and Mr. D, noted that Mr. B was having difficulty performing his work because of discomfort and reported the problem to their supervisor, Mr. E. After some prodding from Mr. E, Mr. B said his left wrist was sore, but he did not at that time relate it to his job. Mr. B was taken to see a plant nurse, Mr. F, who found three elastic wraps on the left wrist sufficiently tight to restrict circulation. There was bruising of the right arm but not of the left. Mr. F recorded that Mr. B complained of pain in the bone, but would not say how he was injured.

Mr. B continued to work with increasing pain until September 21, 1982, when he saw Dr. G, his family physician, who diagnosed tendinitis and advised Mr. B to rest the arm for two weeks. Dr. G also ordered an x-ray which subsequently showed that Mr. B had a fractured bone in the forearm just above the wrist.

On September 30, 1982, Mr. B was seen by Dr. J, an orthopaedic surgeon, who recorded that Mr. B had a heavy job on an assembly line. Noting that Mr. B had experienced acute pain in the left wrist without a definite injury, Dr. J diagnosed a stress fracture of the left distal ulna as a direct result of his work.

On November 16, 1982, a Board investigator interviewed Mr. B who described his job as loading metal bases varying in weight into one machine and then moving them to another. The current order was 10,000 of the heaviest parts. Mr. B stated that he went to work on September 14th with his arm wrapped because of discomfort and, from then until his layoff, he felt continual sharp pain above his left wrist. The pain forced him to use his right arm and hip to guide the bases from one machine to the next, resulting in bruising.

Mr. C, a co-worker, told the Board investigator that, after changing over to heavier bases than usual, Mr. B worked with a bandage on his left wrist, a common practice among employees when working on the heavier parts. Mr. C noted that Mr. B used his right hip and arm to move the base to the second machine.

Mr. D, another co-worker, said that Mr. B's movements were awkward and that he appeared to be in some distress. Mr. D offered the information that wrist problems were common, especially when working with heavier parts.

Mr. E told the Board investigator that the metal base being worked on, their heaviest at approximately 61 pounds, had been used for "a couple of shifts." He described Mr. B as a diligent worker who did his job in a fluid motion with a minimum of physical stress. Mr. H expressed his opinion that Mr. B had been doing the same job for a number of years and there had been no major changes in it.

In December 1982, Board administrators found that Mr. B's claim was doubtful: there was no specific accident; onset occurred before coming to work on September 14th; there had been no significant job change; and it was not clear whether the diagnosis of stress fracture could be related to the history described.

Dr. K, an orthopaedic surgeon acting as consultant to the Board, wrote on December 10th:

From a medical standpoint a stress fracture can occur from repetitive use of the arm. The site of the fracture correlates to the area where maximum discomfort was located.

On December 20th, Dr. L, a Board surgeon, wrote that Dr. K's opinion was not confirmed by three surgical consultants (unnamed). Dr. L did not feel Mr. B's ulnar lesion was work-related.

On March 29, 1983, Dr. J wrote that, without a history of direct trauma to the forearm, he concluded that Mr. B had a stress fracture on the basis of his heavy job at work which "required multiple twisting and loading activities to the left forearm throughout the day."

An Appeals Adjudicator hearing was held on June 21st, at which Mrs. B testified that her husband had been transferred to a sanding operation in June 1982, took three weeks' vacation in July, and returned to the sanding operation in August. Because the sanding bothered his breathing, Mr. B returned to his usual job about the middle of August.

The employer's representative, Mr. M, stated that Dr. J's description of Mr. B's work was mistaken. He argued that the opinions of Drs. K and J regarding a relationship between Mr. B's work and his injury merely noted a possibility, whereas the opinion of Dr. L and the three surgical consultants was a probability which should override the opinions of the two orthopaedic surgeons. The Appeals Adjudicator requested a review from Dr. N, a Board surgeon, who wrote on July 6, 1983: "I can see no relationship." The appeal was denied on September 14, 1983.

At an Appeal Board hearing Mr. M argued that Mr. B came to work on September 14th with his wrist bandaged; he resisted the foreman's efforts to take him to the medical area; and signs of other injuries were present. Mr. B's representative asked that the difference of medical opinion be referred to a Medical Referee.

The Appeal Board denied the appeal on August 29, 1984, citing seven findings: Mr. B had worked as a machine operator for nine years with no recent job changes; he reported to work on September 14, 1982 with his wrist bandaged; he did not give the plant

nurse an accident history or explain the bruises on his right arm and hip; he continued to work and did not seek medical attention until a week later; there was no evidence of an accident at or away from work; Dr. N saw no causal relationship between the fracture and the work history; and, a Medical Referee was not warranted. The Appeal Board concluded that Mr. B's stress fracture of the left ulna did not arise out of and in the course of his employment.

During the course of my investigation I found I might conclude the Appeal Board's decision was unreasonable. In a letter dated November 27, 1986, I advised the Honourable Robert G. Elgie, Chairman of the Workers' Compensation Board, of my possible conclusion and my consequent possible recommendation that the Appeal Board should vary its decision and grant Mr. B entitlement. In support, I noted the following. First, with regard to the finding that Mr. B worked as a machine operator for nine years with no recent job changes, the employer's representative said that Mr. B was engaged in doing the same work throughout the two-year period prior to his death; nevertheless, familiarity with a task precludes neither injury nor stress. I also noted that Mrs. B's testimony indicated Mr. B had left his usual job about three months prior to his injury and had only been back at it for one month. Furthermore, at the time of his injury, he, a co-worker, and the foreman noted that he had been working on the heaviest parts for only a couple of shifts, and had been working on lighter parts before that. It appeared to me that there had been recent job changes and the Appeal Board's finding in this respect was incorrect.

Second, with respect to the Appeal Board's finding that Mr. B reported to work on September 14, 1982 with his wrist already bandaged, I noted that two co-workers told the Board investigator that wrist problems were common. As well, given the nature of a stress fracture, it was not known exactly when the fracture occurred and it might be expected that Mr. B would experience pain over time. It appeared that, on this point, the Appeal Board's finding was irrelevant.

Third, I noted the Appeal Board's finding that Mr. B did not give the plant nurse a history of accident or an explanation for right-sided bruises. While true, the nature of a stress fracture would make it reasonable for Mr. B to have difficulty in articulating the history. As for the bruises on his right arm and hip, it seemed reasonable that Mr. B was initially unable to explain them, but on reflection was able to relate them to the awkward working position his injury necessitated. Mr. C independently corroborated that Mr. B had been using his hip and arm to move the parts. It appeared that the Board's third finding was not pertinent.

Fourth, while it is true that Mr. B continued to work and did not seek medical attention until a week later, this action would seem to be consistent with his belief that he had sustained a muscle pull which would clear up with time. Like Mr. B, Dr. G was first of the opinion that the problem was a soft tissue injury and he did not suggest further treatment until an x-ray revealed a fracture. If a physician at first considered the problem to be relatively minor, then it would be reasonable for a layman to consider it minor as well. Although the Appeal Board's finding was correct, it did not appear to me to be significant.

Fifth, with respect to the finding that there was no evidence of an accident, I noted that a stress fracture does not follow a history of specific injury, and it appeared that the Board's fifth finding was irrelevant.

Sixth, while Dr. N saw no causal relationship between Mr. B's fracture and his work history, two orthopaedists did. Mr. B's attending specialist reached a diagnosis of stress fracture caused by heavy work after taking a history and examining his patient; Dr. J's description of Mr. B's work as a heavy job which "required multiple twisting and loading activities to the left forearm" appeared to be correct. The other orthopaedic surgeon, Board Consultant Dr. K, confirmed in a memo written specifically with respect to Mr. B, that a stress fracture could be caused by repetitive movement. Dr. N, a general surgeon at the Board, gave no reason for his opinion. It seemed inappropriate for the Appeal Board to accept Dr. N's opinion over those of two specialists, one of whom examined Mr. B, and both of whom stated reasons for their opinions.

Finally, I agreed with the Appeal Board's finding that a Medical Referee was not warranted, because it appeared the preponderance of medical evidence supported Mr. B's claim. Two orthopaedists were of the opinion that Mr. B's stress fracture was related to his work; the only support for Dr. N's opinion came from Dr. L, who consulted to an unknown extent with three unknown and unnamed physicians and gave no reasons for his opinion.

The Workers' Compensation Board did not reply to my November 17, 1986 letter.

I also advised the accident employer of my possible conclusion and recommendation and received a response from Mr. M dated January 21, 1987. In his reply, Mr. M made the following points: I disregarded the company's evidence that there were no recent job changes; it was relevant that Mr. B reported to work with his wrist already bandaged; the case ought not to be decided on speculation as to what is possible, but on the evidence respecting Mr. B's physical well-being, his wrist bandage, the accident history, and the fact that he did not seek medical attention immediately; Mr. B had a significant problem and there is no explanation why he did not seek medical attention earlier; that a stress fracture could be caused by repetitive movement does not prove that an injury arose out of and in the course of employment; and my letter ignored the evidence that a number of physicians agreed with Dr. L, and that they were not referred to by name does not eliminate the opinions they provided.

Regarding Mr. M's comment as to whether Mr. B had a recent job change, I noted not only Mrs. B's sworn testimony, but also the statements made by Messrs. B, C and E that, at the time of injury, Mr. B had moved from working on light parts to working on the heaviest parts. I noted as well the employer's submission that there was no job change. More significantly, however, I noted that familiarity with a task precludes neither injury nor stress.

With respect to Mr. M's assertion that it was relevant that Mr. B appeared at work on September 14th with his wrist already bandaged, I made my remarks in light of the nature of a stress fracture. That is, the exact date of the fracture's occurrence is not known since it occurs with no specific injury, the first symptom is aching which decreases with rest, and the pain builds gradually over time. Since the pain was already interfering with Mr. B's ability to function at work on September 14th, it is likely that the fracture occurred before that date and it would be reasonable to wear a wrist support before then.

I agreed with Mr. M's argument that the case should be decided on the evidence and not on speculation as to what is possible, and pointed out that the medical evidence supported my position. I agreed as well with Mr. M's point that Mr. B had a significant problem, a stress fracture of the left ulna. Given the insidious nature of the ailment, however, it is not surprising that at first both he and his family physician considered it to be a relatively minor problem.

I noted Mr. M's argument that work circumstances and accident history are an important part of the medical assessment, and the fact that a stress fracture could be caused by repetitive movement does not prove that injury by accident arose out of and in the course of employment. I pointed out, however, that the physicians who examined Mr. B supported a connection between his work and his injury.

With respect to Mr. M's assertion that I ignored the evidence that a number of physicians agreed with Dr. L, I pointed out that in the letter conveying my possible conclusion and recommendation I recorded Dr. L's reference to three unnamed physicians. I do not feel, however, that the reference could be described as constituting significant medical evidence as neither reasons nor other information were provided.

Before reaching a final conclusion in this case, I carefully considered all of the factors outlined in the letters in support of my possible conclusion and recommendation, and in Mr. M's response. I was of the view that his response did not constitute a significant refutation of the points I raised.

I wrote in summary that disablement is defined by the Board as "an onset of symptoms unrelated to a specific trauma but which has a causal relationship to the work being performed", and Board policy requires only that the causal relationship involve factors such as strenuous work, awkward position or unaccustomed strain. In Mr. B's case, on or about September 14, 1982, he developed pain and weakness associated with a stress fracture of the left ulna, diagnosed by his family physician and his orthopaedic surgeon. The fracture was unrelated to a specific trauma but his doctors were of the opinion that it was causally related to his work which involved strenuous work and unaccustomed strain. The specialist at the Board confirmed compatibility of repetitive movement and the stress fracture.

It was my opinion, pursuant to section 22(1)(b) of the *Ombudsman Act*, that the Appeal Board decision of August 29, 1984 was unreasonable to conclude that Mr. B's stress fracture of the left ulna did not arise out of and in the course of his employment. I recommended, therefore, pursuant to section 22(3)(g) of the *Ombudsman Act*, that the Workers' Compensation Board should revoke the August 29, 1984 Appeal Board decision and grant entitlement for Mr. B's stress fracture of the left ulna as arising out of and during the course of his employment.

This recommendation was included in a report dated April 8, 1987 which was sent to the Chairman. The Board had not formally responded to the report and recommendation by March 17, 1988 although it had sought medical clarification. I therefore determined that a reasonable length of time had passed without appropriate action on the Board's part and reported the matter to the Premier. Mr. BB was advised of the results of the investigation and the file was closed.

Detailed Summary No. 3

On June 18, 1985, Mrs. C contacted our Office and expressed her dissatisfaction with the Workers' Compensation Board Appeal Board decision dated March 5, 1985. Mrs. C contended that she should have received temporary total disability benefits subsequent to October 13, 1982 as a result of her February 7, 1980 compensable accident.

On August 21, 1985, the Chairman of the Workers' Compensation Board was notified, in accordance with the requirements of the *Ombudsman Act*, of our intention to investigate Mrs. C's complaint. The Chairman was also asked whether he was prepared to make a statement of the Board's position on Mrs. C's complaint. On August 28, 1985, a reply was received indicating that the Board did not wish to make a statement at that time.

Our file on the complaint was assigned to a member of my investigative staff who thoroughly reviewed Mrs. C's Workers' Compensation Board file and considered the relevant legislation and Board policy in relation to the issue.

On October 7, 1980 Mrs. C, then 44 years old and employed as a book packer, developed chest pain while lifting boxes filled with books. She sought medical attention on the same day from Dr. E, her family physician, who diagnosed a strain to her anterior chest wall muscles. When Mrs. C was re-examined by Dr. E on November 18, 1980, he reported that there was pain and tenderness over both pectoral muscles and pain on lifting her arms over her head. In December 1980, Dr. E noted that there was swelling of the upper right costochondral joints. He referred Mrs. C to an orthopaedic surgeon, Dr. F.

In his report dated January 12, 1981, Dr. F noted that there was a full range of movement in Mrs. C's neck and shoulders. Mrs. C complained of tenderness to palpation in the right upper anterior chest area. Dr. F was of the opinion that Mrs. C had sustained a myofascial strain in the region of the pectoral muscles on the right side anteriorly. He suggested that she continue conservative treatment, which was to have included rest, heat and analgesics, and then attempt to return to work within a few weeks.

Because Mrs. C did not return to work, the Board requested that Dr. F re-examine her. In his April 13, 1981 report to the Board, Dr. F indicated that Mrs. C complained of discomfort across the front of her chest on the right side and in her right shoulder. On examination, Dr. F noted that there was a full range of motion of the shoulder with some discomfort on internal rotation. There was also tenderness to palpation in the region of the upper pectoral muscles on the right side. Dr. F recommended that Mrs. C be admitted to the Board's hospital for physiotherapy and a work assessment.

Mrs. C was admitted to the Board's Hospital and Rehabilitation Centre on July 3, 1981. It was noted that Mrs. C complained of constant discomfort associated with the anterior right side of her chest and radiating into her right shoulder. X-rays taken of her cervical spine, right shoulder and chest revealed no abnormality. On July 21, 1981, Mrs. C was discharged from the Board's Hospital and Rehabilitation Centre under Dr. E's care for the treatment of her non-compensable diabetes. It was noted that her compensable chest wall injury had improved significantly but that she was not considered ready to return to work.

Subsequent to her discharge from the Board's hospital in July 1981, Mrs. C was seen on several occasions by Dr. E. In each progress report, Dr. E reported continuing difficulty with Mrs. C's chest wall area and her right shoulder.

The Board arranged for Mrs. C to be assessed on July 21, 1982 by Dr. G, a Board physician. On examination, Dr. G reported that Mrs. C experienced pain on palpation of the front of her right chest at about shoulder level. He noted that tenderness was extended over to the anterior part of the right shoulder. Dr. G also noted that Mrs. C's pain increased when she attempted to put her right arm behind her back. Dr. G was of the opinion that Mrs. C was fit for modified work excluding the excessive use of her right arm and above-shoulder-level work.

Mrs. C did not return to work and the Board arranged for her to be reassessed by Dr. F. In his January 3, 1983 report, Dr. F noted that the physical findings were unchanged from the previous examination in April 1981. He indicated that Mrs. C did not require any further active treatment and that she should return to suitable work.

In a Claims Review Branch letter dated February 18, 1983, Mrs. C was advised, that because she was not looking for suitable work, her benefits were reduced to 50% effective October 13, 1982. In addition, she was informed that the Board's medical advisors were of the opinion that she was no longer disabled from working because of her compensable disability. Consequently, the Board denied her entitlement to compensation benefits subsequent to February 3, 1983. Mrs. C appealed further and, following an Appeals Adjudicator hearing which was held in April 1983, the Claims Review Branch decision was upheld.

In June 1984, an Appeal Board hearing was held because Mrs. C was dissatisfied with the Appeals Adjudicator decision. Before rendering its decision, the Appeal Board requested reports from Dr. D, an orthopaedic surgeon who had treated Mrs. C.

In October 1983, Dr. D examined Mrs. C for a non-compensable left knee disability. He noted that Mrs. C was complaining of pain in her right shoulder and that she had discomfort on full abduction of the right shoulder. In March 1984, Dr. D reported that Mrs. C was still complaining of right shoulder pain. He noted that there was a full range of movement in the shoulder. He also indicated that Mrs. C's symptoms were relieved by a subacromial (under the acromion, which is the lateral extension of the spine of the scapula, projecting over the shoulder joint) injection. Dr. D recommended further investigation of the right shoulder.

In his May 9, 1984 report, Dr. D reported that an arthrogram revealed a tear of the rotator cuff of the right shoulder. In October 1984, the Appeal Board requested that Dr. H, a Board surgical consultant, review Dr. D's reports and provide a medical opinion on Mrs. C's level of disability. Dr. H responded that Mrs. C was partially disabled due to her right

shoulder disability. In December 1984, without providing any further medical reports, the Appeal Board again requested that Dr. H review Mrs. C's file. In his response, Dr. H expressed the opinion that Mrs. C's right shoulder problem was not related to her compensable injury and that the strain of her anterior chest wall had resolved. In its March 5, 1985 decision, the Appeal Board concluded that Mrs. C was not totally disabled subsequent to October 13, 1982 and that, as of February 3, 1983, she was capable of undertaking her regular employment.

As part of our investigation, a letter was written to Dr. D for his comments as to whether or not there is a relationship between Mrs. C's rotator cuff tear and her compensable injury. Dr. D expressed the opinion that Mrs. C's right shoulder disability was worsened by her compensable injury in 1980. He noted that a tear of the rotator cuff would only be seen on special x-rays, i.e. the arthrogram which was done on April 19, 1984.

During the course of this Office's investigation, I reached the tentative conclusion pursuant to section 22(1)(b) of the *Ombudsman Act* that, "the Appeal Board unreasonably concluded that as of February 3, 1983, Mrs. C, as far as her compensable disability was concerned, was capable of undertaking regular employment". The Chairman of the Workers' Compensation Board and the accident employer were advised of my tentative conclusion and recommendation. The reasons for my tentative opinion were as follows:

1. Although Mrs. C's injury was diagnosed as a strain of the anterior chest wall muscles, she has consistently complained of pain radiating to her right shoulder. In addition, her right shoulder problem has been documented by all of her attending physicians including the Board's physicians at its Hospital and Rehabilitation Centre.
2. Following a Board examination in July 1982, Dr. G noted that Mrs. C was fit for modified work excluding the excessive use of her right arm and in particular above-shoulder-level work.
3. Reports obtained from Dr. D, for medical examinations conducted in October 1983, March, April and May 1984, revealed continuing right shoulder problems. As well, Mrs. C received a sub-acromial injection for her symptoms. An arthroscopy in April 1984 revealed an incomplete tear of the right rotator cuff tendon.

4. Mrs. C should not be penalized because the tear of her right rotator cuff tendon was not diagnosed until 1984, four years after her first complaints of shoulder pain.

5. In October 1984, at the Appeal Board's request, Dr. H reviewed Mrs. C's entire file and expressed the opinion that Mrs. C was partially disabled due to her right shoulder problem. Two months later, without the benefit of an examination and without providing specific reasons, Dr. H reversed his decision. He concluded that Mrs. C's right shoulder problem was not related to her compensable injury and that the strain of the anterior chest wall had resolved.

6. Dr. D's report makes a strong case, on an exacerbation of an underlying condition basis, for a relationship between the 1980 injury and her continued complaints of shoulder pain since that time.

I tentatively recommended, pursuant to section 22(3)(g) of the *Ombudsman Act*, that the Appeal Board should revoke its decision and grant Mrs. C entitlement to further benefits subsequent to February 3, 1983 for her continuing right shoulder disability as being related to her accident of 1980. In addition, I tentatively recommended that the Board should consider having Mrs. C examined further as suggested by Dr. D.

To date, I have not received the Board's response to my April 28, 1986 letter. On behalf of the employer, the Vice-President/Human Resources responded to my correspondence and enclosed a copy of Mrs. C's application for employment. It was noted that when Mrs. C completed the application form on July 28, 1980 she indicated that she had a back and right shoulder problem which might limit her ability to perform certain kinds of work. I have noted that the employer is of the view that "although the chest strain was compensable, any shoulder injury had clearly occurred prior to [Mrs. C's] employment . . . and does not qualify based on her employment with the accident employer."

Before reaching a final conclusion, I have thoroughly reviewed the available documentation and carefully considered the employer's position. I am of the opinion that the fact that Mrs. C had a pre-existing right shoulder problem should not disentitle her from receiving further benefits for an exacerbation which her attending orthopaedist relates to her compensable injury.

Given the above documentation, it is my opinion, pursuant to section 22(1)(b) of the *Ombudsman Act*, that the Appeal Board unreasonably concluded that as of February 3, 1983 Mrs. C was capable of undertaking regular employment. I recommend, therefore, pursuant to section 22(3)(g) of the *Ombudsman Act*, that the Appeal Board revoke its decision and grant Mrs. C entitlement to further benefits subsequent to February 3, 1983 for her continuing right shoulder disability as being related to her accident of 1980. In addition, I recommend that the Board should consider having Mrs. C examined further as suggested by Dr. D.

These recommendations were included in a report sent to the Chairman and to the Minister on September 9, 1986.

Although the Board did not formally respond to the report and recommendations by March 30, 1987, continuing discussions have taken place and the Board has sought further medical information. However, I determined that a reasonable length of time had passed without a formal response to the report and reported the matter to the Premier. Mrs. C was advised of the results of the investigation and the file was closed.

ONTARIO OMBUDSMAN STAFF

TO MARCH 1988

ALLAN, John
ARCELL, Tim
BAILIE, Sam
BAIN, Dorothy
BAKER, Betty
BERNIER, Suzanne
BIDELL, Joan
BISCHOPING, Johanna
BLIGHT, Carol
BOOTHBY, Paula
BOURNS, Maureen
BOYTCHUK, Nataalka
BROOKWELL, Larry
BROWN, Anne
BRYANT, Dale
BUCKSTEIN, Elaine
BURROWS, Patricia
BYLSMA, Klaas
CARLINO, Gerry
CHAMBERS, Sharon
CHEECHOO, Gilbert
CHIASSON, Lucille
CHIC, Jacquie
CONROY, Nadene
COOLMAN, Joyce
CORION, Margaret
CROSSLEY, Barbara
CUMMINGS, Penny
DEAR, Rosie
DEARDEN, Sylvana
DEPOCAS, Elise
ELDRIDGE, Carole
ESTORBA, Josie
EVANS, Cathy
FENTON, Mary Jane
FITZPATRICK, John
FURINO, Susan
GABRIEL, Liz
GAIGNARD, Lynda
GERHARD, Perry
GLICKMAN, Sheldon
GOODERHAM, Christine
GRAY, Virginia
GRIFFIN, Dianne
HARRINGTON, Ed
HARRISON, Joan
HASLAM, Sue
HILL, Daniel G.
HIRST, Barbara
HOBSON, Jim
HOFFMAN, Judith

HOLMES, Jackie
HUNG, Elsa
IRONS, Alison
ISOVSKI, Azire
JAMIESON, Marion
JONES, Christine
KATAWAY, Olga
KEIL, Martha
KERSHAW, Janet
KIESECKER, Barbara
KING, Dianne
KNUDSON, Inez
KOCH, Karen
LAMPKIN, Lorna
LA ROSA, George
LATINCIC, Mary Ann
LEE, Allan
LEE, Barbara
LEGARDO, Lourdes
LOGAN, Rosemary
LUCAS, Lourine
LYNCH, Gwen
MACDONALD, Andrew
MARCHAND, Marie
MARKIEWICZ, Eva
MARTIN, Christine
MAY, Laurel
McCOLLIN, Phyllis
McKAY, Catherine
McLEOD, Maret
McPHEE, Sherrie
MENNIE, Florence
MESLIN, Eleanor
MILLS, Allan
MORRISH, Ginette
MORRISON, Gail
MORTON, Margaret
MURPHY, Mary
MURRAY, Dolly
NASIR, Josie
NICHOLAS, Jim
ORTVED, Janet
PELLETIER, Allan
PENFOLD, Kathy
PFAFF, Gail
PINKOS, Carolyn
PRESNER, Matilda
RICHER, Louise
ROBERT, D'Arcy
ROBSON, Donna
RODGERS, Faye

ROMAN, Josie
ROSE, Janet
SABATINO-ROMEO, Mary Ann
SCHULZ, Wolfgang
SEALEY, Carol
SEMENCIW, Joe
SHANKOWSKY, Harry
SIMONS, Craig
SKENE, Tom
SMITH, Mary Lou
SORA, David
SOUSA, Maria
STANSFIELD, MaryAnn
TAMAYA, Fern
THEN, Milan
THURTON, Peter
THOMS, Joanne
TORRANCE, William
TRATNER, KARY
VAN KLEEF, Joy
VIRC, Elizabeth
WALCOTT, Margaret
WESTON, Elizabeth
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MEMBERS OF THE STANDING COMMITTEE ON THE OMBUDSMAN

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Mr. E. Philip	Etobicoke-Rexdale
Mr. J. Pollock	Hastings-Peterborough

CLERK: Mr. T. Decker

STAFF:

Mr. J. Bell, Counsel
Ms. C. Evans, Research Officer,
Legislative Research Services

APPENDIX A

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMIT- TEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
<u>MINISTRY OF AGRICULTURE AND FOOD</u>					
14	1	That the Milk Commission of Ontario pay the first 60-day period on each of the claims arising from the financial collapse of the processor.	16 Rec. 6	That the Farm Products Marketing Commission pay the first 60-day period on each of the claims arising from the financial collapse of the processor.	Payments are presently being arranged.
<u>MINISTRY OF THE ATTORNEY GENERAL</u>					
<u>Criminal Injuries Compensation Board</u>					
Special Report Mr. B	1	1. That the Criminal Injuries Compensation Board award appropriate compensation to the complainant for loss of income and pain and suffering as a result of the injuries sustained by him.	16 Rec. 7	That the Criminal Injuries Compensation Board award appropriate compensation to the complainant for loss of income and pain and suffering as a result of the injuries sustained by him.	The Ombudsman will seek the Board's compliance.
		2. That the Board establish guidelines to assist members in applying section 17(1).	16 Rec. 8	That the Criminal Injuries Compensation Board provide full written reasons to applicants for all decisions made under the <u>Compensation for Victims of Crime Act</u> .	
		3. That the Board provide full written reasons to applicants for all decisions made under the <u>Compensation for Victims of Crime Act</u> .	16 Rec. 9	That the <u>Compensation for Victims of Crime Act</u> be amended by deleting the words "for payment of compensation" from section 25(1).	
			16 Rec. 10	That the Criminal Injuries Compensation Board consent to an order of the Divisional Court extending the time for filing an appeal under the <u>Compensation for Victims of Crime Act</u> ; that the Board further consent	

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMIT- TEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
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MINISTRY OF THE ATTORNEY GENERAL
Criminal Injuries Compensation Board
(cont'd)

Special Report Ms. D	2	1. That the Criminal Injuries Compensation Board award appropriate compensation to the complainant for loss of income and pain and suffering as a result of the injuries sustained, as well as additional costs, including return bus fare to Alberta from the hearing in Toronto, as well as reasonable babysitting costs to allow the complainant to attend the hearing in Toronto.	16 Rec. 11	to an order of the court setting aside its order of December 1, 1982 denying compensation to the complainant in this case and ordering that a new hearing be conducted; and that the Board bear the legal costs of this appeal along with the reasonable travel and legal expenses of the complainant in attending the new hearing.	The Ombudsman will seek the Board's compliance.
		2. That the Board establish guidelines to assist members in applying section 17(1).	16 Rec. 12	That the Criminal Injuries Compensation Board award appropriate compensation to Ms. D for loss of income and pain and suffering as a result of the injuries sustained by her, as well as additional costs including return fare to a hearing in Toronto (if necessary) and reasonable babysitting expenses.	
		3. That the Board establish guidelines to assist members in dealing with applications by battered spouses to enable Board members to become sensitized to the issues involved.	16 Rec. 13	That the Criminal Injuries Compensation Board consent to an order of the Divisional Court extending the time for filing an appeal under the Compensation for Victims of Crime Act; that the Board further consent to an order of the court setting aside its order of November 24, 1982	

MINISTRY OF THE ATTORNEY GENERAL
Criminal Injuries Compensation Board
(cont'd)

4. That the Board provide full written reasons to applicants for all decisions made under the Compensation for Victims of Crime Act.

denying compensation to the complainant in this case and ordering that a new hearing be conducted; and that the Board bear the legal costs of this appeal along with the reasonable travel and legal expenses of the complainant in attending the new hearing.

MINISTRY OF CONSUMER AND
COMMERCIAL RELATIONS

12 1 1. That the Ministry reopen its file and take whatever steps are necessary to review the HUDAC and related inspection reports for those houses owned by persons who originally filed a deficiency list and who are still interested in some form of assistance from the Ministry (It shall be the Homeowners Association's responsibility to advise the Ministry of the names of these persons.); that following this review the Ministry, at no cost to the homeowners, repair those homes which suffered damage as a result of a major structural defect relating to original construction or in

13, Rec. 6 ["7"]

1.(a) That the Ministry reopen its file on the matter and take whatever steps are necessary to review the HUDAC and related inspection reports for those houses which are owned by persons who originally filed a deficiency list and who are still interested in some form of assistance from the Ministry. (It shall be the Homeowners Association's responsibility to advise the Ministry of the names of these persons.)

(b) That, following this review, the Ministry, at no cost to the homeowners, pay or cause payment to be made for the repair of those homes which have suffered damage as a

Payment has been made to all but one of the homeowners. A process for making the final payment has been established.

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	CONSIDERED IN STANDING COMMIT- TEE REPORT NO.	RECOMMENDATION DENIED	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
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MINISTRY OF CONSUMER AND
COMMERCIAL RELATIONS
(cont'd)

which there exist substantial defects relating to original construction as reflected in the HUDAC inspection reports; that upon proof of payment of repair costs, the Ministry compensate any of the above-noted homeowners who have repaired damage to their homes caused by major structural defects relating to original construction, or any substantial defects relating to original construction, as reflected in the HUDAC inspection reports; that the Ministry send reporting letters to the above-noted homeowners indicating the matters about which the homeowners complained as well as the corrective work intended.

2. That the Ministry should send reporting letters to those homeowners who are still interested (as indicated to the Ministry by the Homeowners Association), and the original deficiency lists. The letter should indicate the matters about which the homeowners complained as well as the corrective work intended.

result of a major structural defect relating to original construction or in which there exist substantial defects relating to original construction as reflected in the HUDAC inspection reports.

(c) If any of the above-noted homeowners have repaired damage caused by major structural defects relating to original construction, or any substantial defects relating to original construction, as reflected in the HUDAC reports, then these homeowners should be compensated for their actual repair costs.

In the Committee's opinion, the Ministry should seek contribution and/or indemnity from HUDAC for the cost of these repairs. The Committee has concluded that HUDAC's actions have in some measure caused or contributed to the Ministry's predicament and to the statements made by the Minister wherein he made commitments to the homeowners.

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMIT- TEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
<u>MINISTRY OF THE ENVIRONMENT</u>					
11	10	That the Minister cancel his decision to accept the adjudicator's recommendation not to pay the complainant's claim for interest; that the Minister accept and consider the claim as one properly made under the <u>Public Works Creditors Payment Act</u> .	12 Rec. 2	That the Minister of the Environment accept in principle that the Crown may, in the appropriate circumstances, pay a claimant interest due pursuant to a term of a contract with a contractor; that the Minister consider the merits of the complainant's claim for interest owing on the principal amount in question and formulate a decision whether or not to pay the claim.	The Ministry's legal counsel attended the Committee in March, 1988. He undertook to make an offer of arbitration to the complainant within a week. In April, the complainant advised the Ombudsman he had received no communication from the Ministry. In May, 1988, the Deputy Minister and the Acting Director of Legal Services for the Ministry appeared before the Committee and undertook to initiate the arbitration process within a week. The process is now underway.
<u>MINISTRY OF HOUSING</u>					
<u>Ontario Housing Corporation</u>					
7	18	1. That OHC reconsider C Limited's claim as assessed by the referee and rule on the correctness of the assessment; 2. That OHC reconsider the mortgage in question as being a collateral security and not taken by C Limited in lieu of cash and not altering the then existing obligations between C Limited and W Limited;	8	OHC advised the Committee in its hearings on the Ombudsman's Seventh Report that the recommendation would be implemented. The Ombudsman and the Committee agreed that the response of the governmental organization was adequate.	In January, 1988, it was learned that the recommendation had never been implemented, and this matter was brought to the present Standing Committee's attention. The matter is presently under review by the Ministry, and its view of the matter will be reported to the Committee at the next hearings.

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	CONSIDERED IN STANDING COMMIT- TEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
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MINISTRY OF HOUSING
Ontario Housing Corporation
(cont'd)

3. That OHC not deny C Limited's claim on the basis that it was not a claimant or a contractor as defined by the Public Works Creditors Payment Act and accept the referee's definition thereof; and
4. That OHC recommend that the claim as assessed by OHC be paid by the surety.

MINISTRY OF LABOUR
Workers' Compensation Board

7	22	That the Appeal Board reconsider its decision, with a view to granting the complainant a temporary supplement to his permanent partial disability award, on the basis of a full consideration of the appropriate test for entitlement to such a benefit.	11	That the Workers' Compensation Board reverse its decision of September 20, 1983 and grant the complainant a temporary supplement to his permanent partial disability award. It is understood that the Board retains full discretion in assessing and quantifying the amount of such supplement.	The Board awarded the complainant a temporary supplement in the amount of \$927.32 for a period of one year only. The Committee subsequently considered this award and confirmed that it complied with the Committee's recommendation.
		The Appeal Board reconsidered pursuant to the Select Committee's 14th recommendation in its Tenth Report. However, in a decision dated September 20, 1983, the Appeal Board decided the worker was not entitled to a supplement.			

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMIT- TEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
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MINISTRY OF LABOUR
Workers' Compensation Board
(cont'd)

14	19	That the Appeal Board decision of October 28, 1985 should be revoked and that the worker should be granted entitlement for noise-induced hearing loss and tinnitus.	16 Rec. 3	That the Workers' Compensation Appeals Board revoke its decision of October 28, 1985 and award appropriate benefits to the complainant for bilateral hearing loss and tinnitus.	The recommendation has been implemented.
14	20	That the Appeal Board decision of June 18, 1986 should be revoked and that the worker should be granted entitlement to benefits for his hip disability.	16 Rec. 4	That the Appeal Board decision of June 18, 1986 be set aside and that the Workers' Compensation Board award benefits to the complainant for his hip disability forthwith.	The recommendation has been implemented.
14	21	That the worker should be granted entitlement to benefits on the basis of disablement arising out of and in the course of his employment for the period August 26, 1980 to September 1, 1981.	16 Rec. 5	That the complainant be granted entitlement to benefits on the basis of disablement arising out of and in the course of his employment for the period August 26, 1980 to September 1, 1981.	The recommendation has been implemented.

MINISTRY OF NATURAL RESOURCES

Special Report Chief B	3	1. That the Ministry of Natural Resources employ a consultative procedure in future when dealing with perceived contraventions of section 8 of Regulation 414 under the Game and Fish Act by directly informing relevant parties, including each licensee, of	16 Rec. 14	1. That the Ministry of Natural Resources employ a consultative procedure in future when dealing with contraventions of section 8 of Reg. 414 under the Game and Fish Act by directly informing the individual Band licensees in question and confirming all contact in writing; and	The Ministry has asked the Committee for clarification so that it can proceed to implement the recommendation.
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OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMIT- TEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
<p style="text-align: center;"><u>MINISTRY OF NATURAL RESOURCES</u> (cont'd)</p> <p>delinquent reports and confirming all contact in writing; and</p> <p>2. That the Ministry of Natural Resources reimburse the fishermen of the fishery who were charged and convicted for the costs of their legal expenses, and those fishermen who were convicted should also be reimbursed the amount of their fines, once they have been paid.</p> <p>2. The Committee expressed grave concern at the Ministry of Natural Resources' not responding to the Ombudsman's section 19(3) report with all the facts that were available to the Ministry at that time.</p>					

APPENDIX B

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3)(d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
<u>MINISTRY OF GOVERNMENT SERVICES</u>							
2	60	That the Ministry pay the complainant the sum of \$1,318.00 for his losses and legal expenses.		The Ministry of Government Services stated that it had no authority to comply with the recommendation.	3, 34 Rec.	That the Audit Act and the Financial Administration Act be amended to provide that when such a recommendation is made by the Ombudsman after all necessary and appropriate requirements of the Ombudsman Act have been adhered to by his Office, and when entirely accepted by the governmental organization, "a lawful authority" is created for such money to be paid by the governmental organization out of the Consolidated Revenue Fund. Further, that the Ombudsman's Office and the Ministry of Government Services resume their discussions on the merits of the Ombudsman's recommendation and that the results of these discussions are to be reported to the Standing Committee.	The Ministry of Treasury and Economics has responded and proposed that the Ombudsman Act is the more appropriate statute for the amendment, since the purpose of the amendment directly relates to procedure under that Act. The Ministry proposed that the Ombudsman Act be amended as follows: "Where the Ombudsman, in a report under subsection 22(3), recommends to the governmental organization to whom the report is made that the governmental organization pay a specified sum to or for the benefit of the complainant to reimburse the complainant for an ascertainable financial loss suffered by him in the matter complained of, and where the Minister to whom a copy of the report is sent under that subsection accepts the recommendation at the amount mentioned therein or at a lesser amount acceptable to the Ombudsman and there is no authorization, apart from this
						That the Ombudsman Act be amended as follows: "Where the Ombudsman, in a report under subsection 22(3), recommends to the governmental organization to whom the report is made that	

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3)(d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
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MINISTRY OF GOVERNMENT SERVICES
(cont'd)

the governmental organization pay a specified sum to or for the benefit of the complainant to compensate the complainant for an ascertainable financial loss suffered by him, and where the Minister to whom a copy of the report is sent under that subsection accepts the recommendation at the amount mentioned therein or at a lesser amount acceptable to the Ombudsman and there is no authorization, apart from this section, for the payment of the sum so agreed on, such sum shall, where it is less than \$1,000 and has been ascertained as required by this section, be paid by the Treasurer out of the Consolidated Revenue Fund on the authorization of the Minister concerned, and where the sum so agreed on is \$1,000 or more, it may be paid by the Treasurer out of the Consolidated Revenue Fund on the order of the Lieutenant Governor in Council approving such payment as is recommended by the Minister concerned."

The amendment has been included in the package of amendments to the Ombudsman Act.

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3)(d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
<u>MINISTRY OF GOVERNMENT SERVICES</u> (cont'd)							
					12, p. 16	The Committee noted that the Attorney General has stated that recommendations for these amendments to the Act would be placed before Cabinet. The Committee expects to be dealing with them in the near future.	
					13, p. 8	The Committee recommends that the Attorney General table immediately in the Legislature a bill amending the <u>Ombudsman Act</u> .	To date, no Bill has been tabled.
<u>MINISTRY OF HEALTH</u>							
3	40	That: 3) The <u>Nursing Homes Act, 1972</u> , be amended in order that provision be made for the successful candidature for the construction of a new home to make application for a conditional licence immediately upon the making of the award to him. This licence should be conditional on compliance with the terms of the proposal and any subsequent stipulations imposed	May 4, 1977	Agreed to implement recommendation.	5, p. 32	The Committee considered this complaint for the purpose of following up with the Ministry as to the implementation of the Ombudsman's recommendation as set out at pages 177 and 178 of the Ombudsman's Third Report.	Necessary amendments have yet to be enacted. The Ministry proposed an interim arrangement whereby on any call for proposals the Ministry will undertake to the successful proposer that he be awarded a licence provided he constructs and establishes the home in accordance with the <u>Nursing Homes Act</u> and regulations. This interim arrangement was acceptable to the Ombudsman.
					11, p. 21	The Committee accepted the interim arrangement on the understanding that the Act will be amended at some time in the future.	

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3)(d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
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MINISTRY OF HEALTH
(cont'd)

by the Ministry prior to the granting of an unconditional licence.

12, p. 15 The Committee noted that it is still awaiting amendments to the legislation and will continue to monitor the Ministry's response to its recommendation.

13, p. 12 The Committee noted that the interim arrangement accepted by the Committee pending amendment of the Nursing Home Act continues to be followed by the Ministry and will be followed until the legislation is amended. The Committee expressed hope that the amendments will be brought forward soon.

The Ministry has advised that amendments are presently being drafted.

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THE OMBUDSMAN OF ONTARIO

ANNUAL REPORT 1988-89



The Ombudsman | Ontario
L'Ombudsman | Ontario

Eleanor Meslin, LL.B.
Temporary Ombudsman
Ombudsman intérimaire

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June 28, 1989

The Speaker
Legislative Assembly
Province of Ontario
Queen's Park
Toronto, Ontario

Dear Speaker:

It is an honour and a pleasure to present the Sixteenth Annual Report of the Ombudsman for the period of April 1, 1988 to March 31, 1989.

This report is submitted pursuant to section 12 of the Ombudsman Act.

Yours sincerely,

Eleanor Meslin



ELEANOR MESLIN

OMBUDSMAN'S MESSAGE

At the end of this fiscal year we marked the retirement of Dr. Daniel G. Hill, the third Ombudsman of Ontario. As Temporary Ombudsman, I am taking this opportunity to express the appreciation of all the staff members who had the honour of working with Dr. Hill.

Dr. Hill was employed in the public sector in Ontario for 27 years intermittently, from the time of his appointment as the first Director of the Ontario Human Rights Commission to his retirement as Ombudsman. His vision and commitment, his legacy as founding father, innovator and initiator within the human rights movement, both in our province and in our country, are an inspiration to all who aspire to serve the public.

Having served as Executive Director during Dr. Hill's five-year term, I take pride in what has been accomplished by a very able staff, with the assistance and the co-operation of a conscientious public service, and the goodwill and support of the members of the Standing Committee on the Ombudsman and their colleagues in the Legislature, not only in the last fiscal year but during the tenure of this dedicated Ombudsman.

I am confident we have maintained a vital and healthy organization, committed to ensuring the people's right to fair treatment from government.

Dr. Hill's approach as Ombudsman reflected his background in the field of human rights and his commitment to the United Nations Universal Declaration of Human Rights, especially article 21 which provides for universal accessibility to the services of government.

In this spirit, many initiatives were undertaken to strengthen this Office. We have constantly refined and improved our capacity to handle complaints, which are the core of the Ombudsman's responsibilities. A vigorous public education and community outreach program was launched.

In addition, Regional facilities were established in Kenora, Sault Ste. Marie, Sudbury, Timmins, Windsor and London to augment existing facilities in Ottawa, North Bay and Thunder Bay. Special programs dealing with Native issues, ethnocultural concerns, French language services, and the disabled were also introduced.

This Office was made more reflective of the new Ontario - multilingual, multiracial, and multicultural. Staff morale was strengthened with the introduction of a salary administration program, an employee grievance procedure and both a management and an employee relations committee.

We have expanded the Ombudsman's focus beyond the investigation of individual complaints to include systemic investigations.

In many cases our recommendations have improved governmental administration by convincing provincial agencies to change or clarify needlessly complicated or unfair policies and procedures. In other cases the government has accepted our recommendations to amend legislation and regulations.

However, several unfinished issues still lie ahead for this Office, in the areas of our current and future jurisdiction and regarding amendments to the *Ombudsman Act*.

The Standing Committee on the Ombudsman has completed its hearings concerning the expansion of the Ombudsman's jurisdiction into children's aid societies, public hospitals and the Ontario New Home Warranty Program, and will be making its recommendations soon.

The Attorney General has caused the Ombudsman to initiate a Court challenge to the Ombudsman's authority to investigate actions and decisions of public servants acting pursuant to Orders-in-Council. If the Ombudsman's jurisdiction were to be limited in this way, 50 percent of the Ombudsman's current complaints could not be investigated. This matter is to be heard, in the near future, by the Divisional Court and I am hopeful it will be resolved in the Ombudsman's favour. If not, the Ombudsman's function will be severely restricted.

The Ombudsman Act has not been amended since 1975. A list of amendments was prepared by Dr. Hill's predecessor, submitted to the then Attorney General, but not passed. Since then, Dr. Hill added several amendments, which he believed are necessary to improve the Ombudsman's effectiveness. These include:

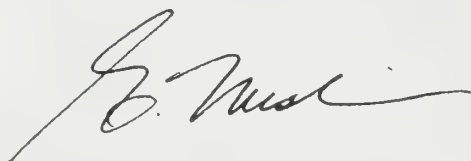
- i. allowing the Ombudsman to comment publicly when the Ombudsman believes it is in the public interest;
- ii. mandating the Ombudsman to conduct public education programs; and
- iii. permitting government agencies to pay money to complainants (ex gratia payments) where no other legal authority is available.

Although submitted to the Attorney General at the beginning of Dr. Hill's tenure, they still have not been presented to the Legislature, despite requests by both the Ombudsman and the Standing Committee.

As Temporary Ombudsman it is my privilege to present this Annual Report. The Report acts as an important public record, by providing a sense of how the various areas in the Office contribute to our overall goal — the advancement of administrative justice.

The Report reflects the varied and often complex tasks involved in achieving this goal. What cannot adequately be conveyed, is the high level of personal dedication and commitment shown by each staff member in the fulfillment of his or her duties.

Ultimately, it is their efforts which allow us to maintain our high standards in the delivery of Ombudsman's services to the public of this province.



Eleanor Meslin

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INTRODUCTION

This Annual Report covers the fiscal year from April 1, 1988 to March 31, 1989. The Report has been divided into two parts.

Part I provides an overview of our last fiscal year and includes a selection of case summaries which illustrate the varied complaints that come before the Ombudsman.

Part II is devoted entirely to detailed summaries of recommendation denied cases and tables of all recommendations outstanding from past reports.

FISCAL YEAR 1988-89

In commenting on the past fiscal year, 1988-89, I am pleased to report that the number of requests for assistance processed by this Office was higher than ever before in our history. The number of complaints and inquiries closed in the past fiscal year reached an all-time high of 21,485.

EXPEDITED CASE HANDLING

On July 25, 1988, the Ombudsman issued his report on case expediting. This report resulted from recommendations made to Dr. Hill by a committee of the staff, established to review a consultant's report on the handling of cases with the view to decreasing delays and making the Ombudsman's process more efficient. Dr. Hill's report contained more than 60 recommendations, most of which focused on the investigative process. The remaining recommendations addressed matters pertaining to administration, communications, finances, personnel and the Office's regional operations.

A committee was subsequently created to ensure the implementation of Dr. Hill's recommendations. It has recently submitted a final report. A substantial number of the recommendations have been implemented, and the remaining recommendations will be implemented within the fiscal year.

REGIONAL SERVICES

During the last fiscal year we furthered our goal of providing reasonable access to Ombudsman services in several areas of the province.

IMPROVING ACCESSIBILITY

This year was largely characterized by the reorganization within Regional Services.

The administrative center in Toronto was restructured to create a more balanced supervisory structure. As a result the Regional program now operates under the direction of a Regional Manager and two Supervisors. This structure encourages more direct supervision and guidance on a daily basis to each region, thereby offering a means of constantly improving service delivery throughout the province.

In the Fall of 1988 we relocated the Sault Ste. Marie office from the confines of a house, into a more visible storefront operation in the downtown core. Similarly, the London office which was located on the second floor was relocated to a ground level separate storefront location, in January. The relocation of both offices reflects an attempt to become more visible and, therefore, accessible to the local communities. At present we are studying the feasibility of relocating both the North Bay and Windsor offices.

This consolidation through relocation has allowed more direct and immediate access to our services.

The comprehensive study of service delivery in Northeastern Ontario, prepared for the Ombudsman by Regional Services Staff, strongly recommended the development of a new office to service the Sudbury area. In September of 1988 the Ombudsman held meetings with community leaders in Sudbury to announce his decision to open a District office in that community. The office was officially opened in March of 1989 and has received tremendous support from the community.

This expansion of service reflects the Ombudsman's ongoing commitment to improve accessibility, particularly to the residents of Northern Ontario.

NATIVE PROGRAM

The Native Program has been functioning since 1984. Its public education and outreach has been positive and extensive, including attendance at native provincial conferences over this period. The jurisdictional and non-jurisdictional complaint volumes have increased steadily. An evaluation is being conducted of the complaint handling and public education activities over the past five years to examine the effectiveness of service delivery to First Nations and aboriginal people of Ontario.

During this year our Office with the assistance of our Native Program Officer, Allan Pelletier, was able to assist two First Nations, Kingfisher Lake and Chippewas of Nawash, in resolving complaints against governmental agencies.

ETHNOCULTURAL COMPLAINTS OFFICER

In an attempt to ensure that ethnocultural issues are being dealt with in a sensitive manner, we have filled the vacancy for the position of Ethnocultural Complaints Officer. Ms. Nazlin Daya will be responsible for community outreach and public education. Starting in the Metropolitan Toronto area, she has developed an ambitious, strategic plan which will involve interaction between the various ethnic groups and our staff.

NEW APPOINTMENTS

During the past fiscal year, with the development of our regional services program, the following appointments were made:

David Sora	Manager, Regional Services
Inez Knudson	Supervisor, Regional Services
Alison Irons	Supervisor, Regional Services
Elise Lanthier	District Officer, Timmins
Mary Carl	District Officer, Thunder Bay
Rosemarie Blenkinsop	District Officer, Sudbury.

PUBLIC EDUCATION

The activities of our Communications and Publications and Community Relations Units continued to expand during the last year.

The Communications and Publications Unit has put into distribution a Braille transcription of our fact sheet. In addition, an audio library has been created for all our other educational materials, previously available only in print, in keeping with federal government guidelines and our Reasonable Access Policy for materials for individuals who are unable to read or use regular print materials because of physical disability.

The Community Relations Unit continued its program of outreach and education, by organizing and participating in seminars, conferences, workshops, and media presentations. On average, a program about the Ombudsman's Office and its services took place every three days throughout the year. As well, the unit participated in over 170 media programs, reaching over 1,000,000 Ontarians with information about the Office. Week-long community events took place in Hamilton and Sudbury, with the Ombudsman hosting receptions in each centre. A major conference in Toronto introduced the Ethnocultural Project and its officer to the community. The Unit also continued to support the outreach efforts of the Regional Services division, Native programs and the special project on the disabled.

SPECIAL PROJECT ON THE DISABLED

Our Special Project on the disabled continued its outreach, education, and complaint handling activities in the last fiscal year. Carole Eldridge, the Special Projects Officer, made 31 presentations to organizations and groups throughout Ontario, which resulted in direct contact with over 800 interested representatives of consumer groups, government employees, friends and family of people with disabilities, and advocacy networks. The project carried an average monthly investigative caseload of 30. An information mailing to over 100 United Way agencies resulted in inquiries, requests for more information, and several complaints. As well, Ms. Eldridge established a resource library on disability for the use of other investigative units containing several hundred reports, manuals, periodicals, legal opinions, books, and pamphlets.

MANAGEMENT GROUP

The role of the Ombudsman's senior management committee was redefined after working with a management consultant at a two-day seminar in April, 1988.

The committee is now known as the Management Group and, having issued a statement of goals for the Office of the Ombudsman, has resolved that it is committed to carrying out the objectives of the office, including the philosophy and goals of each appointed Ombudsman.

During the year, Management Group, in conjunction with the Employee Relations Committee, has studied many aspects of the administration of the Office and made recommendations to the Ombudsman. For example, it has formulated policies relating to part-time employment, surplus and lieu time. It has also developed conflict of interest guidelines which are now an integral part of a new employee's orientation. In the summer of 1988 a summer hours program was offered to staff. Due to its success, a policy of flexible working hours was developed and is now in a 3-month trial period.

Other matters discussed by the Management Group have been: French language training, arrangements for providing multilingual services, a smoke-free working environment, a health room for staff, and an AIDS education program. Management Group has received Ombudsman approval for a program for in-house training of non-investigative staff, has begun to study the training of investigative staff and is now producing an orientation package for the new Ombudsman.

On his retirement, Dr. Hill told Management Group that the advice and guidance it had given him was invaluable, and that he hoped it would continue to function under the new Ombudsman.

SPECIAL REPORTS

During his term as Ombudsman, Dr. Hill presented a number of Special Reports to the Speaker of the Legislative Assembly, so that these Reports might be discussed by the Standing Committee on the Ombudsman in a timely manner. During the 1988-1989 fiscal year, six such Special Reports were issued.

Three of these reports, presented to the Legislature in July of 1988, concerned the Northern Health Travel Grant Program of the Ministry of Health. The complainants were seeking travel grants as companions who, for various reasons, needed to travel with a patient for medical treatment. The Ombudsman recommended that the Ministry of Health amend the relevant regulation in order to remove all age restrictions pertaining to the provision of companion travel grants under the program, so that complainants, who were travelling with patients over the age of 18, would be entitled to grants. The Standing Committee agreed with the Ombudsman's recommendation. The Travel Grant Program is presently under review by the Ministry, a review which will take into account the Committee's recommendation.

Another Special Report to the Legislature also dealt with a complaint against the Ministry of Health. Complainants in this case are the parents of a son who suffers from a rare inherited disorder. The couple wished to have another child, but had been advised that there was one chance in four that their next child would also suffer from the terminal condition present in their first child. They had therefore decided to attempt to have a child by artificial insemination. They requested the Ministry of Health and the Ontario Hospital Insurance Plan to assist them in covering the cost of the donor sperm, but were advised that these costs were not covered under the Plan.

The Ombudsman concluded that the Ministry's refusal to assist with the cost of donor sperm was a decision taken in accordance with unreasonable legislation, and recommended that the Ministry and OHIP reconsider the inclusion of the cost of donor sperm in the Schedule of Benefits under OHIP. The Ministry declined. In the hearing before the Standing Committee, the Ministry attempted to present new information to the Committee, which it refused to accept. In the result, the Committee recommended that the Ministry arrange to provide the complainants with donor sperm at no cost as soon as an acceptable test has been developed to ensure that the donor sperm is free from the AIDS virus.

The Ombudsman also presented a case to the Legislature concerning a complaint against the Teachers' Superannuation Fund and the Ministry of Education. In this case, the complainant was not eligible for survivor benefits from her late husband's pension from the Teachers' Superannuation Fund, because she had married her husband after his retirement. The Ombudsman found the relevant provision of the Teachers' Superannuation Act to be improperly discriminatory, and recommended not only that the offending section be changed, but that the complainant be provided with an ex gratia payment in the amount of the allowance she had been denied. He also recommended that payment be made to any other surviving spouses who requested the benefit as a result of his recommendation. The Committee, after hearing from Ministry and Ombudsman staff, concluded that a review of the legislation should be undertaken by the Ministry regarding extension of eligibility for survivor benefits to spouses such as the complainant. It also recommended that the Ministry issue an ex gratia payment to the complainant and to any surviving spouses in similar circumstances whose requests resulted from the recommendation. Implementation of the recommendation has not been completed at the time of publication.

Early in 1989, the Ombudsman presented to the Legislature a Special Report on Farm Q. It complained to the Ombudsman about a decision of the Ministry of Agriculture and Food to deny compensation to Farm Q for losses it alleged it had suffered through reliance on incorrect statistics published by the Ministry. These statistics related to the quality of swine purchased by Farm Q for breeding purposes. It was Farm Q's contention that, because the Ministry's statistics made the pigs look better than they were, their breeding program was less successful than expected, and Farm Q lost money.

After a three-day hearing before the Standing Committee, the Committee recommended that the Ministry and the Ombudsman agree upon an adversarial method to determine the damages, if any, suffered by Farm Q as a result of the incorrect Ministry statistics. Discussions to determine the appropriate process are presently ongoing.

JURISDICTIONAL CHALLENGES

The following is a summary of the jurisdictional challenges that have proceeded to the litigation stage during the current fiscal year.

1. BOARD OF RADIOLOGICAL TECHNICIANS

The Board of Radiological Technicians is established by the *Radiological Technicians Act* and is the supervisory body for radiological technicians in the province. In this fiscal year, the Ombudsman's Office received its first complaint against this Board. The Board has taken the position that the Ombudsman has no authority to investigate it because it is an independent body supervising a self-regulating profession. The Ombudsman, on the other hand, believes that the Board is like any other governmental organization (e.g. The Health Disciplines Board) over which the Ombudsman currently has jurisdiction. This matter will be proceeding to the Divisional Court in the near future.

2. THE MINISTRY OF FINANCIAL INSTITUTIONS, ET AL

This dispute is perhaps the most significant challenge to the Ombudsman's jurisdiction to date. It was raised by the Attorney General on behalf of the Ministry of Financial Institutions, and also by the Ministry of Health and the Ministry of Agriculture and Food. It concerns the Ombudsman's right to investigate the actions of civil servants carrying out their duties under the authority of an Order-In-Council. Although the Ombudsman does not investigate Orders-In-Council, the Ombudsman does investigate actions implementing Orders-In-Council or taken pursuant to Orders-In-Council. The significant impact of this challenge concerns Regulations which are promulgated by Orders-in-Council. If the Ombudsman were unable to investigate the actions of civil servants acting pursuant to Regulations, then a substantial amount of the Ombudsman's activity would be nullified. For example, the Ombudsman would be unable to investigate complaints involving correctional institutions, workers' compensation, social assistance, pensions and the Ontario Health Insurance Plan. This jurisdictional challenge could prevent the Ombudsman from investigating approximately 50 per cent of the cases that are currently now investigated. This matter will be heard by the Divisional Court in the near future.

Case Summaries

CASE SUMMARIES

INTAKE AND INFORMATION

SUMMARY NO. 1

Very often informal inquiries by the Ombudsman help settle troublesome matters for complainants. In this case, the Ombudsman's intervention resolved a senior citizen's concern about a missing cheque.

A senior citizen complained that his Ontario tax grant cheque, which was mailed to his bank, was not deposited in his account. He could not get any further information from the bank. He had been trying to get a duplicate cheque from the Ministry of Revenue when he was told that he should clear up the matter with his bank. During our informal inquiries with the Ministry, it was discovered that the cheque had been sent to the wrong address and had been returned to the complainant's home. From the Ministry's copies of the cashed cheque it was determined that the cheque was cashed by the complainant's son who was named after his father. The complainant was pleased that, with our Office's intervention, the matter was finally resolved.

SOCIAL BENEFITS

SUMMARY NO. 2

The Ombudsman was able to help an isolated Northern Ontario community deal with a hazardous situation by alerting the parties involved.

A Native Community Worker lodged a complaint with our Office on behalf of concerned parents in an isolated northern Ontario community.

The parents were concerned that children living at both ends of the town had to cross railway tracks in order to get to and from school. Some of these children from a nearby Native village had to cross the railway tracks as well as a highway. The safety problem that generated this complaint was that the trains often stopped for long periods of time at these crossings. In sub-zero winter weather, children walking to and from school became impatient and were seen trying to crawl under or over the stopped trains. The complaint focused upon the refusal of one of the local school boards to provide a bussing service, and the Ministry of Education's response to this matter.

As the Ombudsman does not have the jurisdiction to investigate complaints against school boards, our investigation was limited to an examination of the actions of the Ministry of Education in responding to

the parents' concerns. Although the Ombudsman concluded that the Ministry's actions were not unreasonable, he expressed his concerns about the dangers to which these school children were exposed. He also wrote separate letters to the other involved parties highlighting the hazardous situation. A number of positive responses were received. The railway, in particular, replied that steps had been taken to dramatically reduce the period of time during which the crossings were blocked.

Several months later, a community member wrote to thank the Ombudsman for his support, and advised that school bus service had been instituted by the remaining school board. The letter indicated that in bringing this hazardous situation to the attention of the various parties involved, the Ombudsman was instrumental in helping the community obtain a positive resolution.

SUMMARY NO. 3

The Ombudsman will support a complaint when the Ministry fails to act within a reasonable time on information available to it.

In 1977 the complainant applied for Family Benefits as a disabled person. He also applied for a Canada Disability Pension (C.D.P.) at the suggestion and assistance of his income maintenance worker. His C.D.P. payments began in August 1977, but this income was not reported until 1982. By then an overpayment charge of approximately \$16,000.00 had accumulated. Our investigation revealed that the complainant was not aware C.D.P. was considered declarable income until 1982 when his case was transferred to another income maintenance worker who took the time to explain it to him. Until then, he believed the Ministry was aware of this income as it had made the initial referral for a C.D.P.

It seemed to the Ombudsman that the Ministry failed to act on information available to it within a reasonable time. The Ombudsman made a preliminary recommendation that the Ministry waive the overpayment in accordance with its policy not to recover overpayments that result from an administrative error.

In response, the Ministry proposed that it would not recover any further monies on the condition that the complainant not seek to recover the money he had repaid to date.

The complainant and the Ombudsman considered this to be a reasonable solution.

SUMMARY NO. 4

Sometimes, in the course of making informal inquiries, new information is uncovered which results in the Ministry reconsidering its original decision. In this case, the Ombudsman assisted a student who was denied financial assistance under the Ontario Student Assistance Program (OSAP) to complete his studies.

In 1988 the complainant applied for OSAP to attend Community College. However, the financial aid office advised the complainant that he was placed on the "restricted list" due to the fact that he defaulted on a previous OSAP loan in 1987. The complainant had explained that he had made regular payments and had to the best of his knowledge repaid his previous loan. The complainant submitted an appeal but the decision was unchanged. Further, he was advised that he would remain on the restricted list for a period of one year. Without a loan, the complainant indicated that he would be unable to continue in his program at the college.

The complainant indicated that he had last made payments in 1987 through a private collection agency. When advised he had \$95.00 outstanding to repay the account, the complainant asked for an explanation from the collection agency for this figure. The agency agreed to provide him with an explanation. Nonetheless, it appears the collection agency closed the account and contacted Central Collection Services (of the Ministry of Government Services) that the debt was uncollectable and that they advised CCS to write off the account. However, the complainant was not notified by either the private collections agency or by Central Collection Services (CCS) that the account was written off and that the student would be placed on the restricted list, which in effect, would prevent him from obtaining future student loans.

Central Collection Services confirmed that the complainant had made regular payments up to March 1987 and that he had paid a total of \$1,045.00 to the private collection agency. CCS also verified that the account was closed without notifying the complainant or giving him an opportunity to pay the balance before placing him on the restricted list. Furthermore, CCS indicated that the private collection agency had an obligation to confirm with the complainant the exact amount owing before closing the account. This apparently was not done. Finally, CCS acknowledged that before April 1988 the Ministry did not have procedures in place to adequately monitor the practices of private collection agencies who are responsible for collecting government related debt.

In light of this information, the Student Awards Branch agreed to reconsider its original decision. Following its review, the Ministry determined that the complainant had acted in good faith and removed him from the restricted list. This resolved the complainant's problem and resulted in him being awarded a loan of \$1,800.00 and a grant of \$3,140.00. As a result, the complainant was able to complete his studies.

JUSTICE AND LICENSING

SUMMARY NO. 5

The system for regulating financial institutions was overhauled and improved as a result of this case, but government compensation for investors' losses was not deemed to be appropriate.

In March, 1989 we finalized the investigation of 25 complaints about the provincial government's regulation of two fraudulently operated financial institutions. One of the companies operated as a mortgage broker and the other offered real estate syndications; both attracted investment from the public. The two companies were closed down in 1978 by cease trade orders issued by the Ontario Securities Commission.

The Ombudsman's investigation, although completed in 1984, remained open while lengthy negotiations were conducted with the Ministry concerned. Many weaknesses in the regulatory system were identified. The Ministry embarked on a comprehensive review of its operations and introduced a significantly changed system to correct the problems. The regulatory scene changed fundamentally as a result.

The investors claimed that they should have been compensated for their losses. The Ombudsman did not support this claim. He expressed every sympathy for the people who had lost their money, but concluded that, although the inadequacies of the regulatory system may have exacerbated the investors' tenuous position, it was fraudulent activity that directly caused their losses.

SUMMARY NO. 6

Governmental organizations often change their decisions when additional relevant information is provided. In the following cases, the Ombudsman helped one complainant obtain her birth record, and assisted another in attaining Indian status under federal legislation.

The complainant contacted our Office regarding a long-standing dispute with the Office of the Registrar General. The complainant, never having had a birth certificate, approached the Registrar's Office in 1983 to obtain a delayed birth registration for herself. It was important to the complainant that her surname on her birth record be that of her natural father and that her mother's husband not be listed as her father. Having submitted various documents to the Registrar over the years regarding her parentage, the complainant was of the view that the Registrar was acting unreasonably in failing to accept the evidence presented and to register her in the manner she wished.

The Registrar's position, however, was that the evidence regarding the complainant's lineage was conflicting and did not conclusively determine that the complainant's father was someone other than her mother's husband. In addition, it was not clear from the evidence whether the complainant had been born prior to or during her mother's marriage to her legal husband. The Registrar proposed registering the complainant under either her mother's maiden name or married name, a solution which the complainant found unacceptable.

After a careful review of the evidence, it was discovered that the Registrar was not in possession of certain documentation dealing with the long-term relationship between the complainant's mother and the man the complainant claimed was her father. As a result of discussions and the presentation of this additional evidence, the Registrar agreed to issue a delayed birth registration to the complainant which would declare her surname as that of her natural father, but which would not identify or provide any particulars of her natural father on the record. As the complainant found this to be a satisfactory resolution, our file was closed.

In a related matter, the complainant's nephew had applied for Indian status in accordance with federal legislation and in support of his application, had approached the Office of the Registrar General in order to obtain a delayed birth registration for his deceased mother, which he believed would help substantiate his entitlement. As in the preceding case, the Registrar General was of the view that there was inconclusive evidence regarding the parentage of the

complainant's mother and took the position that her name would have to be recorded as that of her mother's legal husband. Again, the complainant was not satisfied with the Registrar's decision.

The complainant in this case believed that his mother's birth records were integral to the success of his Indian status application, and that as a result of the Registrar's stand, his efforts to gain status were being stymied. He therefore sought assistance from the Ombudsman in resolving this problem.

Prior to our conducting a review of the lineage evidence in this case, we contacted the Department of Indian Affairs and requested a review of the complainant's application to confirm whether production of his mother's birth records were in fact necessary. Shortly thereafter, the Department of Indian Affairs awarded the complainant Indian status, after having concluded that given the other documentation on file, the complainant would not have to submit his mother's delayed birth registration in order to substantiate his claim for entitlement under the federal legislation.

SUMMARY NO. 7

Sometimes the Ombudsman must advise a Minister and the Premier of his decisions with respect to complaints he has supported before the governmental organization takes action to implement his recommendation.

We received two different complaints concerning decisions of the Teachers' Superannuation Commission (TSC) to deny personal representatives the right to apply for unpaid pension benefits. In the first case, the contributor had been a teacher for only a short time during his working years and once he retired, he did not apply for the pension to which he had contributed. Upon his death his spouse, who was executrix of his estate, attempted to collect his benefit, but the TSC denied her request stating that the contributor had failed to apply for a pension before his death and his spouse could not do so now.

Similarly, another complainant advised us that the TSC would not allow him, as executor of his mother's estate, to apply for the one month's survivor's benefits to which she was entitled. His mother died within one month of the TSC pensioner, but because she did not return a signed application for benefits prior to her death, the TSC would not accept our complainant's application on behalf of his mother's estate.

The *Teachers' Superannuation Act, 1983* states that an allowance shall be paid only after the Commission receives an application. The Commission interpreted that such application must be completed by the contributor, a committee or a person with power of attorney. The Ombudsman advised the Commission that, in his view, the legislation and the format prescribed by regulation made no such distinction between the type of applications which would be accepted from persons other than the contributor and those which would not.

Additionally, the Commission argued that an allowance ends at death and actuarial assessments of the Fund do not include the additional cost of benefits payable for which application is not made. In the Ombudsman's view, these cases did not concern future payments but payments to the deceased's estate of a debt due but as yet unpaid. The Ombudsman advised the Commission that he considered the Fund to have been unjustly enriched by retaining the contributors' entitlement, since actuarial assessments would be based on payments made at age 65 until death.

It was the Ombudsman's final conclusion and recommendation that the Commission's decisions in these cases were unjust and payment ought to be made. After the Ombudsman had advised the Minister of Education and the Premier of his position, the Commission notified him that it would accept his recommendation that these monies be paid, with interest, to the complainants.

SUMMARY NO. 8

The Criminal Injuries Compensation Board was willing to rehear this inmate's application for compensation for injuries as his incarceration at the time of the assault presented unique circumstances.

The complainant, a provincial jail inmate, contacted our Office to request that we investigate his dissatisfaction with a 1985 decision of the CICB.

The complainant explained that he had suffered serious permanent injuries as a result of an unprovoked attack by another inmate during his incarceration in a federal penitentiary in 1982. As this constituted a criminal assault and the penitentiary was located in Ontario, the complainant made application for compensation to the CICB. The Board in its 1985 decision expressed the opinion that the inmate had, "refused . . . cooperation with . . . a law enforcement agency", as set out in the *Compensation for Victims of Crime Act*, and as such, exercised its discretion under the legislation to refuse to make an order for compensation.

The complainant explained to our Office that the assault was reported to the correctional authorities, who took disciplinary action against the offender under the correctional system. The complainant stated that he had not failed to cooperate but had decided not to lay criminal charges against the offender, because he feared reprisals from other inmates. This evidence had been presented to the CICB; however, it formed the view that the inmate's decision constituted a refusal to cooperate with a law enforcement agency.

After making some preliminary inquiries, the CICB was notified in writing of this Office's intent to investigate the Board's decision and its use of discretion in this case. The Chairman of the CICB, on receipt of our letter and having undertaken a review of the circumstances of this case, suggested that a rehearing was appropriate.

The complainant found this suggestion of a rehearing to be a satisfactory resolution to his complaint, since it would afford him a further opportunity to claim compensation for his injuries arising out of the assault.

The complainant has since made application to the CICB and a date for a rehearing is being scheduled.

SUMMARY NO. 9

Policy changes benefitting many are often the result of the investigation of an individual complaint. In this case, the Ombudsman's investigation resulted in the Criminal Injuries Compensation Board's development of a policy to provide written reasons to all applicants when they have been denied extensions of time for filing late applications for compensation.

On March 3, 1987, our complainant, an elderly woman, made an application for an extension of time to enable her to file an application for compensation to the Criminal Injuries Compensation Board. In her application, she indicated that the crime for which she was seeking compensation occurred on August 15, 1980 (seven years earlier). The *Compensation for Victims of Crime Act* requires that all applications be made within one year of the crime. In its discretion, the Board refused her application. No written reasons were given for the refusal and no explanation was given.

The complainant could not understand why her application had been denied. Our investigation discovered that the Board had written its reasons in the file but had failed to convey them to the complainant.

The Board agreed to allow the investigator to relay the written reasons to the complainant. Also, in response to the Ombudsman's preliminary recommendation to the Board, it assured him that, in the future, it would provide written reasons to all applicants in cases in which extensions of time had been denied.

SUMMARY NO. 10

New information led to the Teachers' Superannuation Commission approving the purchase of pension credit for employment in the U.K.

The complainant, a teacher at a community college in Northeastern Ontario, contacted our Office to register a complaint against a decision of the Teachers' Superannuation Commission.

He advised that he is 60 years of age and hopes to take advantage of the early retirement (without penalty) incentive, currently offered under the *Teachers' Superannuation Act*. In order to make this financially feasible he applied to the commission to purchase eight years of pension credit for work in the U.K. from 1955. The application was denied because he was due to receive a tiny pension (about \$28.00 a year) from his U.K. employer. Our investigation established that the U.K. pension was being held for the complainant to comply with requirements imposed on the employer when it opted out of the State pension scheme years earlier.

We wrote to the U.K. employer asking for clarification. We were told that the complainant would not receive any pension from the employer's pension plan and that the \$28.00 State pension did not relate to the period 1955-61. This information was provided to the Commission, which then allowed the complainant to buy back six years, two months and ten days of pension credit. He plans to pay for the buy-back with the money he will receive from his early retirement entitlement.

The result is a substantial increase to the complainant's retirement income from the Ontario Teachers' Superannuation Fund.

SUMMARY NO. 11

Sometimes an investigation will result in a Ministry's full review of its file and a new decision.

The complainant wrote to the Ombudsman, complaining that the legal fees charged by the Public Trustee's Office relating to her late husband's estate were unreasonable.

Upon investigation, the Public Trustee's Office reviewed its file and agreed that there were no supporting documents substantiating a portion of the legal fees charged against the husband's estate.

As a result of discussions, the Public Trustee's Office agreed to reverse the charge and send the complainant a cheque for the overpayment in the amount of \$200.00.

LABOUR AND PSYCHIATRIC INSTITUTIONS

SUMMARY NO. 12

New evidence will often prompt a government agency to reconsider its original decision. In this case the Ombudsman solicited an independent medical opinion to help a worker persuade the Workers' Compensation Appeals Tribunal to hold a hearing to consider whether reconsideration of his claim was warranted.

On January 15, 1973 the worker, then 35 years old and employed as a machinist, slipped on oil at work and injured his low back. The initial diagnosis was an acute lumbosacral strain. In April 1973, he underwent back surgery and the Workers' Compensation Board accepted his claim for benefits. He received temporary total and temporary partial disability benefits for various periods to October 1973. In December 1975, he was granted a 15% monthly permanent partial disability award for his residual low back disability.

The worker notified the Board that, subsequent to October 1973, he continued to experience occasional low back pain for which he sought medical attention. In May 1981, the worker experienced a recurrence of low back pain while he was travelling abroad. He was adamant that he did not have a new accident. He speculated that the additional walking that he had done while he was away might have contributed to his back pain. The worker related that by the end of May

1981, the pain had spread to his left hip and left leg and he was prescribed painkillers. When he returned to Canada in June 1981, he was admitted to hospital and further back surgery was performed in July 1981.

The worker's attending orthopaedic surgeon expressed the opinion that the worker's back problems subsequent to May 1981 were related to his original injury. The worker's family physician referred him to another orthopaedic surgeon, for a second opinion. That specialist indicated that from his review of cases of back surgeries like the worker's, there was a 4% to 8% chance of recurrence of disc herniation on the opposite side. After reviewing the worker's x-ray report, the attending orthopaedic surgeon was of the view that the worker's second surgery in July 1981 was related to the first surgery in 1973.

The worker's file was referred to the Board's radiological consultant, who noted that there were changes which he felt were due to scarring secondary to the surgeries. A Board surgical consultant reviewed the worker's file and indicated that he could see no relationship between the worker's further layoff from work and his compensable accident.

The Appeal Board concluded that the worker was not entitled to further disability benefits as it had not been established that his low back disability in 1981 was causally related to his 1973 accident. The worker requested that the Appeals Tribunal review the Appeal Board decision on the basis that insufficient weight was given to the medical evidence of the specialists who supported his position. However, in a subsequent decision, the Tribunal concluded that there was no good reason to doubt the correctness of the Appeal Board decision.

During the course of our investigation, the Ombudsman requested a complete review and medical opinion from an independent orthopaedic surgeon. The specialist's response, which supported the worker's claim that a causal relationship had been established, was forwarded to the Tribunal for it to consider whether this report would constitute substantial new evidence and grounds for a leave to appeal application.

The Appeals Tribunal has notified our Office that a hearing will be held to consider whether the Tribunal should embark on its reconsideration process. Consequently, as the case is once again under active consideration by the Tribunal, the Ombudsman has, for the time being, closed the worker's file.

SUMMARY NO. 13

On occasion, the Ombudsman will receive a complaint from a person who is not personally affected by the subject matter of that complaint. The Ombudsman Act prohibits the Ombudsman from investigating such a matter. However, if the Ombudsman determines that the subject matter is of a serious nature he may decide to investigate on his own motion.

A complaint concerning the care and treatment of psychogeriatric and forensic patients at a provincial psychiatric hospital was received and the Ombudsman determined that, while the person who lodged the complaint was not personally affected, he would investigate on his own motion due to the serious nature of the concerns.

The hospital was visited on three separate occasions by two investigators and interviews were conducted with two social workers employed at the hospital, as well as with the Administrator and the Psychiatric Patient Advocate. The procedures of the Canadian Council on Hospital Accreditation were reviewed as well as the rating (the highest available) that was granted the hospital by the Council.

In addition, a hospital of comparable size and make-up was toured for comparison purposes and interviews were conducted with two social workers at that hospital.

The environment provided on the psychogeriatric wards was found to be pleasant and clean with adequate living and recreational space. Careful consideration was given to the social work service provided. Considering the funding available to the hospital and in view of the ongoing implementation of the recommendations made by the Council with regard to social work services, the Ombudsman could not support the contentions made pertaining to this service at this facility.

The areas of concern were found to be unsubstantiated and the hospital was found to be providing high-quality care for its patients, particularly on psychogeriatric and forensic wards.

Improvement in facilities and services, as suggested by the Council, are ongoing and the Ombudsman is continuing to monitor the progress achieved.

SUMMARY NO. 14

Bureaucratic errors, such as misplacing a document, are a common cause of complaint to the Ombudsman. In this example Ministry officials misplaced an individual's job application. The Ombudsman's investigation resulted in an apology from the Deputy Minister and an offer for special consideration.

The complainant applied for an executive position with the government through the Human Resources Secretariat. Unfortunately, his application was misplaced; it surfaced after the closing date but before interviews were conducted. The complainant was informed that his application had been received after the closing date, and after the selection process had reached such a stage that his candidacy could not be considered.

When this Office investigated, the Ministry people concerned expressed their regret that errors had excluded our complainant from proceeding in the competition. They said that, in hindsight, he should have received an apology.

Following our preliminary recommendation that the government accept responsibility for the mistake, the Deputy Minister not only apologized to our complainant for the unfortunate and regrettable manner in which his application had been handled, but also extended an invitation to him to discuss his career interests in the Ontario Public Service with the Executive Management Branch. Accordingly, the case was closed as resolved.

SUMMARY NO. 15

Often, the Ombudsman's investigation vindicates the actions of government officials. In this example the Ombudsman determined that gender did not play a part in the selection of the successful job applicant.

The complainant, a 55-year old man, was an unsuccessful candidate for a law clerk position with the Ministry of Labour. He alleged that the successful candidate, a woman, had had an unfair advantage due to her appearance and to "those behavioural properties which pertain to a female".

Our investigation revealed that all of the individuals interviewed had met the basic position criteria and the interview had been used as a means of ranking the candidates according to their ability. The selection panel was comprised of a man and a woman. It was confirmed that all of the applicants had been asked the same prearranged set of questions.

The Ombudsman found that the successful candidate, who possessed excellent qualifications, did very well at her interview. There was no indication that her gender had had any effect on the panel's decision.

The complainant did not have a successful interview and had been ranked as ninth out of ten applicants. This appeared to be an accurate and fair evaluation. In view of these facts, the Ombudsman found that the complainant's allegations could not be substantiated.

SUMMARY NO. 16

When an inequity is apparent the Ombudsman will pursue the matter until justice is done. In this case a monetary settlement was granted after the Ombudsman's investigation revealed unfair practices by a member of a Selection Board panel.

The complainant had worked at a jail as a part-time cook for eight years. There was an opening at the jail for a full-time cook and a competition was held to fill the position. The complainant was one of three applicants for the position. After the position was filled, the complainant alleged to our Office that the person who had won the competition did not have volume cooking experience and was given undue advantage in the competition, as that person was advised to read and exclusively use the book from which all the questions for the interview were taken.

The Ombudsman's investigation revealed that the successful candidate had only six months' cooking experience, no volume cooking experience and had been advised by the person who chaired the Selection Board to read the Food Services Manual out of which all the interview questions were taken. The investigation also revealed that that particular candidate was lent a copy of the Manual by the same person and as a result had exclusive use of it for about two weeks. The other two candidates, however,

were not advised to read the Manual and did not have the opportunity to read it. It was also established that work experience was not given due consideration in the selection process, a fact that gave the winning candidate an advantage and the complainant a definite disadvantage.

The Ombudsman forwarded his preliminary conclusion that the complainant's allegation was justified and preliminary recommendation for suitable monetary compensation to the Deputy Minister. After serious consideration of the Deputy Minister's response, the Ombudsman confirmed his opinion in a final report to the Minister, requesting the implementation of the recommendation.

Subsequent to the Ombudsman's report to the Minister, the Ministry offered a monetary settlement. After careful consideration of the offer, the Ombudsman concluded that the offer would resolve the inequity. The complainant was most satisfied with the settlement reached.

SUMMARY NO. 17

The Ombudsman will undertake an investigation on his own motion when the seriousness of allegations suggest the possibility of a systemic problem in a government agency. In this case the Ombudsman's investigation did not substantiate allegations of unfair personnel practices.

The Ombudsman initiated this investigation on his own motion after receiving complaints from several individuals regarding allegations of unfairness in personnel practices at the Ministry of Housing. The focus of these complaints was the Corporate Policy and Planning Branch. The complaints alleged that unfair job competitions, the lack of competitions for certain positions, improper withdrawal of job duties from employees, and favoritism had resulted in poor working conditions and limited career prospects.

During the investigation, information was obtained from a variety of sources. An independent group of government employees interested in promoting employment equity made submissions. As well, various reports dealing with recruitment and advancement policies and practice were reviewed. An organizational analysis of the Branch was studied, and all employees, including three former employees, of the Branch were interviewed individually and in confidence. The files concerning three competitions

held in the Branch were reviewed, and interviews also conducted with the Branch Director, the Manager of Corporate Resources Management and the Director of Human Resources.

The Ombudsman's investigation did not reveal any evidence of a systemic problem. The complaints had arisen during a period of reorganization within the Branch. In 1985, the Ministry, which had been a very stable organization for a number of years, had begun to experience rapid changes due, in part, to the change in government and new policy initiatives. Problems had surfaced within the Branch and concern had arisen over the services it provided. An independent consulting firm had been hired to conduct an organizational analysis and, as a result, the Branch had been reorganized to recognize its two basic functions: policy and planning. A more equitable distribution of the workload had been achieved, but five employees had been declared surplus. The Ombudsman's investigation revealed, however, that it was almost unanimous among the Branch employees that Branch operations and functioning had improved following the reorganization.

There was concern expressed by both employees and management over the length of time that some positions had been filled on an acting or contract basis. It appeared from the Ombudsman's investigation that this situation in the Branch was not permanent or usual, and there had been reasons for the length of these appointments. The reorganization of the Branch and the creation of new positions, followed by a period of unsettlement while certain individuals undertook grievance proceedings, had contributed to delays in filling the positions permanently. However, once the situation in the Branch had become more stable, steps had been taken to finalize job descriptions and hold competitions.

There was no evidence found of unfairness or favoritism in any of the competition files reviewed. Proper procedures, in accordance with the Ontario government Manual of Administration, had been followed. The candidates had been given equal consideration and the positions had been filled by people who certainly appeared qualified for the jobs. It was also noted that the Ministry of Housing is an active participant in employment equity initiatives and had undertaken to educate its staff in this area.

In considering the results of the investigation, the Ombudsman recognized that the Ministry had no doubt made some decisions which had affected some employees adversely, and it was also likely that some mistakes had occurred. However, he also recognized that it was not possible for any reorganization to accommodate the desires and needs of all employees.

This investigation had been undertaken on the Ombudsman's own motion because of his concern about the seriousness of the allegations. All public agencies and organizations, because of their reliance on and disbursement of public funds, have a duty to promote employment equity and to ensure that their personnel practices are free from favoritism, discrimination and unfairness. However, on the basis of the information obtained during the investigation, it was the Ombudsman's opinion that the general allegations of unfair personnel practices within the Branch were not substantiated.

SUMMARY NO. 18

Through the assistance of the Ombudsman a complainant is relieved of a debt of several thousand dollars and in the process recommendations are made which are accepted by the governmental organization.

The complainant was an uninsured driver involved in a motor vehicle accident in which a woman was hurt. Police investigated and no charges were laid against the driver. Some months later he moved to Alberta but failed to notify the Ministry of Transportation of his new address. Subsequently the woman commenced an action and the Motor Vehicle Accident Claims Fund sent a notice to the driver's last known address by registered mail. When he did not reply, a private investigator was hired and found an address in Alberta where the driver had lived for a time, and a contact at that address who said he could reach the driver.

No further attempt was made to reach the complainant and the Fund agreed to settle the claim by debiting the complainant the sum of several thousand dollars. The complainant learned of his debt when he returned to Ontario and applied for an Ontario driver's licence. He was of the opinion that the Fund's failure to inform him of the claim had deprived him of the opportunity to defend himself.

As part of our investigation, we contacted the counterpart of the Ministry of Transportation in Alberta and learned the complainant's addresses from the time he left Ontario until he returned.

The Ombudsman entered into correspondence with the Motor Vehicle Accident Claims Fund, and ultimately concluded that the Fund was wrong not to use its best efforts to locate the driver and inform him of the claim against him, thereby complying with its obligation of fairness. The Ministry of Financial

Institutions accepted the Ombudsman's consequent recommendation that, in cases where an uninsured motorist was involved in an accident and is believed to have moved out of the province, every reasonable effort should be made to ascertain the current address.

LAND USE/RESOURCES AND REVENUE

SUMMARY NO. 19

Complaints are often resolved by negotiation. In this example the Ombudsman was able to negotiate a settlement with the Ministry for a Native Band which alleged that OPP Officers had used confidential information obtained during an investigation to further their personal interests at the expense of the Band.

When the owner of a cabin located 12 miles north of an Indian Band's Reserve died, the Band was asked to keep an eye on the cabin until it could be disposed of. The cabin was on Crown land and had been occupied under a Land Use Permit issued by the Ministry of Natural Resources (MNR). The Band Chief wrote to the Estate's Administratrix that the Band was interested in buying the cabin and contents. The Administratrix wrote to MNR asking what would be a fair price for the cabin and contents, assuming the Ministry would approve a transfer of the Land Use Permit. In her letter she gave her opinion that a minimum of \$1500 U.S. would be a reasonable price. The Administratrix did not receive a reply to her letter but it was retained in MNR's Land Use Permit file.

A short time later, two OPP constables flew into the reserve on a routine visit. A handgun and bullets which a Band member had found near the cabin were turned over to the constables. In the course of enquiries to determine ownership of the gun, MNR's files were reviewed by the two constables. They saw the letter from the Administratrix stating she was considering selling the cabin to the Band for \$1500 U.S. The constables offered \$2000 U.S. for the cabin and fair market value for the contents. The Administratrix's offer to the Band was rescinded and the cabin was sold to the constables for \$2000 U.S. About a year later, the officers offered to sell the cabin, along with a boat, motor and other items, to the Band for \$15,000. It was, in fact, sold to a third party for \$15,000 and that person then sold it to the Band for that sum.

The Band believed that the OPP Officers had used confidential information obtained during an investigation to further their personal interests at the expense of the Band. After pursuing the complaint with the local detachment and the OPP's Professional Standards Branch, the Band came to this Office.

As a result of our investigation, the Ombudsman found that, although the Constables became aware that the cabin was for sale through the MNR file, which was part of the public record, they only consulted those records as a result of their investigation of the hand gun and bullets. The Ombudsman tentatively found that the officers' actions in purchasing the cabin were unreasonable. He tentatively recommended that the OPP pay the Band \$15,000, minus the value of the improvements, chattels, and the original purchase price of \$1500 U.S. The OPP offered the Band \$2,000, as it felt that the profit realized on the sale of the cabin was minimal. The Band believed that the improvements to the cabin made by the officers had not been substantial and their offer of \$2,000 was unreasonable. They felt that adequate compensation would be \$12,000.

Our Office negotiated with the Ministry of the Solicitor General who is responsible for the OPP, and as a result a cheque was issued to the Band for \$10,000.

SUMMARY NO. 20

A single mother and her family were assisted by the Ombudsman in obtaining suitable affordable housing.

A single mother complained to our Office that although her application for a housing transfer was approved in January 1986, no suitable housing had been offered to her and her family by the local housing authority.

The complainant was living in a two-bedroom apartment with her 15-year old son and her 4-year old daughter. As well, her elderly mother, a stroke victim confined to a wheelchair, was sharing the apartment. Both the complainant and her daughter suffer from chronic respiratory problems which were aggravated by the overcrowded living conditions. She also indicated that the apartment was infested with rats and cockroaches. Although she had submitted medical documentation supporting the contention that the two bedroom accommodation was detrimental to the family's health and well-being, the housing authority had not provided her with adequate housing.

On February 22, 1988, we advised the housing authority of our intent to investigate this complaint. The housing authority responded that while sympathetic to the complainant's plight, it did not have sufficient units to adequately address the problem.

As part of our investigation, we contacted the property manager of the project and made sure that the complainant's apartment was on the treatment list for rodents and cockroaches. As well, a home visit was conducted on May 20, 1988 which confirmed the overcrowded conditions of the apartment. The complainant indicated that she had lived in this apartment for 11 years and, aside from the uncomfortable living conditions, it was very apparent that the unit posed a serious fire hazard due to the accumulation of furniture and other items over the years. Further, the complainant's mother was unable to move around in the apartment as passage for a wheelchair was not possible.

Subsequent to this visit, further discussion was held with the area supervisor and she explained that our complainant was on a priority list of overhoused and underhoused tenants. The hazardous aspects of the overcrowding were emphasized and after a further review of the matter, on May 27, 1988, we were advised that the complainant had been approved for a transfer to a four bedroom semi-detached home in an area which was acceptable to her. The complainant was satisfied with this resolution to her complaint.

SUMMARY NO. 21

A transportation agency changed its decision when the Ombudsman pointed out that it did not have the legal authority to permanently ban a passenger from using its services.

An employee of a provincial transportation authority complained to his employer that his wife and other female passengers on a bus were being intimidated by the actions of a male passenger. Following an investigation conducted by the authority, the male passenger was told while on his way to work one morning, that as a result of complaints which had been substantiated by the authority's security officer, he would not be permitted to use the transit services.

He complained to our Office that this permanent ban was unreasonable and that he had not been provided with a detailed explanation of the authority's decision.

Our investigation revealed that there may have been reasonable grounds to believe that the complainant's behaviour on the vehicle was offensive to passengers. However, the Ombudsman was of the preliminary view that the authority had failed to act fairly by not providing the complainant with adequate notice or an opportunity to make representations, prior to arriving at its decision. It was also the Ombudsman's preliminary opinion that there was no legal authority to permanently ban passengers from the transit system.

The authority reconsidered its position and agreed to allow the passenger to resume use of its services.

SUMMARY NO. 22

Sometimes the Ombudsman is faced with the very difficult task of weighing private interests with those of the public. In this case, the Ombudsman concluded that the Ministry of Natural Resources was not unreasonable in requesting that a privately owned cottage be removed from public land.

The complainant's grandfather had built a cabin on an island in the North Channel of Lake Huron some time in the early to mid-1930's. The cabin was used as a summer cottage and, in 1962, it was passed on to the complainant's father.

The Ministry became aware of the structure in 1966 and determined that a patent had not been issued for the property. Thus, the land still belonged to the Crown. Although consideration was given to selling the land to the father, the then Department of Lands and Forests felt it could not do so as a provincial policy, which came into effect in 1963, prohibited any further sale of Crown land, including islands, along the Great Lakes.

To legalize the occupation of the site and to allow the father to reap some benefits from the investment in improvements done to the cabin, the Department agreed to issue land use permits to him. When the father passed away, the Department, now the Ministry of Natural Resources, agreed to continue issuing land use permits to his daughter, subject to the condition that it would do so only for a five-year period. When this period passed, the Ministry requested that the cottage be removed from the property. The Ministry granted a further extension to the land use permits to allow the family time to relocate the cabin. When this extension expired, the daughter approached the Ombudsman for assistance.

The Ombudsman had a difficult time weighing the Ministry's arguments with those of the complainant's. On one hand, the Ministry noted that sale of Crown land on the Great Lakes had been restricted since 1963 and that this policy had been reaffirmed in the 1985 District Land Use Guidelines for the area. As well, the Ministry pointed out that it is required to retain 25% of the frontage of public lands fronting on a body of water for recreational and access purposes and this objective in the area in question was not being met.

The Ombudsman recognized the complainant's and her family's strong emotional ties to the land resulting from a 50 to 55-year occupation. He recognized too, however, that the public interest which the Ministry of Natural Resources seeks to protect, is the preservation of land in its natural state for all to enjoy. He concluded that the Ministry's decision was based on legitimate public interest concerns and recognizing the Ministry's willingness to accommodate the family through various extensions to the land use permits, the Ombudsman also concluded that the Ministry's decision to discontinue issuing land use permits in the circumstances was not unreasonable.

SUMMARY NO. 23

Often when complaints are resolved the complainant, the Ministry and the public benefit. In this case the Ministry's service to the public immediately improved, after informal queries by the Ombudsman.

The complainant contacted our Office with a complaint against the Ministry of Transportation. He felt that the local Vehicle Licensing Office practice to accept only money orders or certified cheques from the public and its refusal to accept cash was unreasonable and should be discontinued.

After being informed of this complaint by the Ombudsman, Ministry staff from Head Office contacted the local office to discuss the complaint. It was then discovered that the local staff, had for some time operated on the erroneous assumption that they could accept only money orders or certified cheques from the public. The local office was advised of Ministry procedure and policy regarding monetary transactions and now cash, as well as money orders and certified cheques, is accepted.

SUMMARY NO. 24

Administrative delays frequently result in complaints to the Ombudsman. In this case the Ombudsman was able to assist three farmers whose applications for grants missed the closing date for eligibility because of delays in processing the mail.

The complainant, a dairy farmer, applied for financial assistance under a grant program administered by the Ministry of Agriculture and Food. A term of the program stipulated that a grant would not be paid if the application was received by the Ministry after a specified date. The complainant placed his completed application in the mail eight days prior to the closing date for the program. The application was not received by the Ministry until five days after the closing date, and, accordingly, the Ministry rejected it. The complainant felt this decision was unreasonable as the application had been mailed in sufficient time for it to have been received by the Ministry.

In our investigation, we examined the manner in which mail is processed at the Ministry. We learned that during the period in question, Canada Post did not pre-sort mail addressed to the Ministry of Agriculture and Food. This mail, together with other mail addressed to the provincial government, was sent to the Ministry of Government Services for sorting. Staff at that Ministry readily admitted that there was a backlog of between two and a half and four days in sorting and delivering mail. We also learned that mail was not processed for the four days following the closing date for the program as those days were holidays.

All of this information raised the possibility that our complainant's application may well have been received by the Ministry of Government Services before the closing date for the program, but because of delays in processing the mail, the application was not received by the Ministry of Agriculture and Food on time. When this information was presented to the Ministry of Agriculture and Food, it decided to accept the complainant's application and pay the grant. In addition, the Ministry approved grants for two other farmers whose applications experienced similar delays.

SUMMARY NO. 25

The Ombudsman's recommendation helped a deadlocked panel of the Ontario Municipal Board come to a decision. To prevent recurrences, the Ombudsman made recommendations which were adopted by the Ontario Municipal Board.

In the Fall of 1986, the Ontario Municipal Board conducted a nine-day hearing into the complainants' objection to a municipal zoning by-law and refusal to allow for a land severance. After seven and a half months of deliberations, the Board advised the complainants that the two members of the Board who had heard the case were unable to reach a decision and that a second hearing would have to be scheduled before a new panel of the Board.

All of the parties represented at the initial hearing approached the Board requesting relief from the costs of a second hearing. This request was rejected by the Ontario Municipal Board. Since the complainants had spent \$67,000 in attempting to obtain a favorable decision, they requested our assistance. The local Conservation Authority also raised similar concerns as it had incurred expenses in excess of \$37,000 for professional assistance in opposing the position taken by the complainants.

After investigating the complaint, the Ombudsman advised the Ontario Municipal Board of his preliminary view that the parties should be compensated for the additional expenses resulting from the Board's practice of assigning two-member panels which in this case resulted in a deadlock. The Board reconsidered its position and the two members were able to agree upon a decision. A second hearing was thus unnecessary.

While this was certainly an unusual occurrence, in light of the Board's past record of reaching decisions in similar situations, the Ombudsman remained concerned as to the potential for a similarly deadlocked panel resulting in the additional expenses of a second hearing. The Ombudsman recommended that the Board adopt measures which would prevent this situation from occurring in the future. After considerable discussion, the Board adopted guidelines whereby potential impasses would be prevented in a timely fashion.

CORRECTIONAL CASES

SUMMARY NO. 26

The Superintendent of a detention centre refused to allow a Native inmate to partake in a spiritual observance known as the sweetgrass ceremony, until the Ombudsman pointed out that this was against the Ministry's guidelines.

A Native inmate was incarcerated in a detention centre pending charges. He requested a meeting with his Native spiritual leader to participate in a spiritual sweetgrass ceremony. His request was denied by the institutional authorities on the grounds that they considered the inmate to be a security risk.

After obtaining a legal opinion on the matter, and reviewing the Ministry of Correctional Services Manual of Standards and Procedures, the Ombudsman found that the Superintendent had not followed Ministry guidelines. He recommended, that the Superintendent follow the guidelines and also consult with Native Elders, in the matters of Native spiritual observances. The Ministry agreed to these recommendations.

SUMMARY NO. 27

Misunderstandings are often cleared by an informal inquiry by the Ombudsman. In this case the Ombudsman helped an inmate obtain a Legal Aid Certificate.

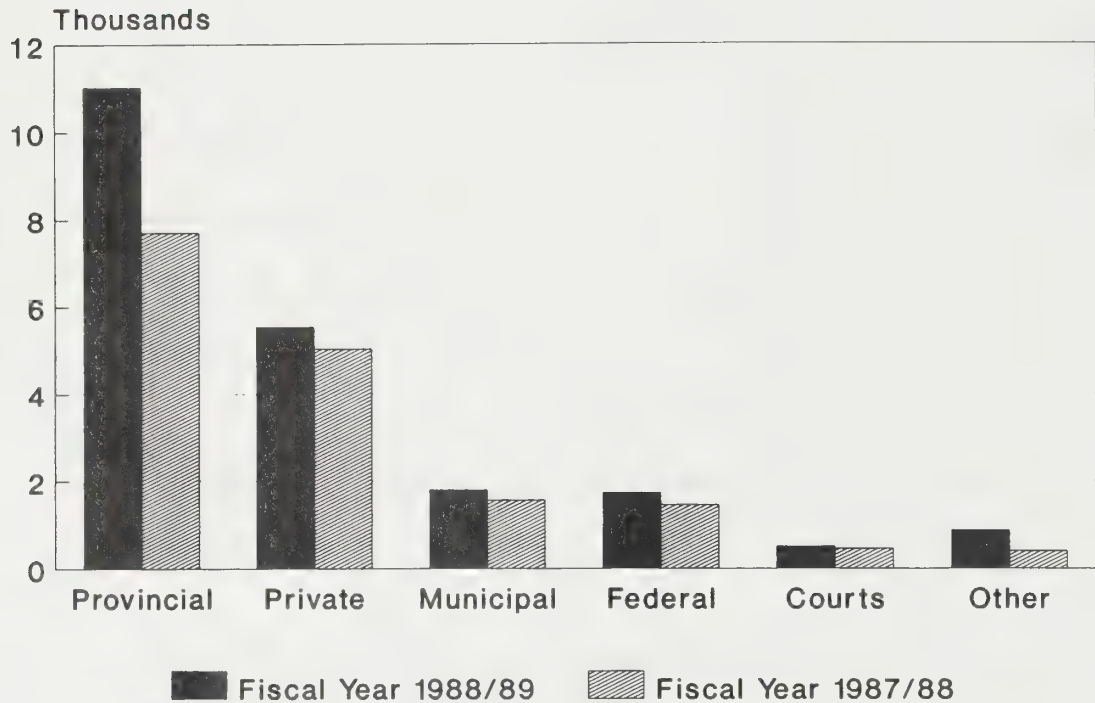
In September of 1988, an inmate incarcerated in jail called our Office requesting assistance with a number of issues. Foremost amongst his concerns was the refusal of Legal Aid staff to interview him to determine his eligibility for Legal Aid. The inmate in question was, at the time of his incarceration, being held in medical segregation because he had Hepatitis B. Legal Aid had refused to see him based on their understanding that Hepatitis B was infectious by airborne contact. Our investigator contacted an investigator with the head office of Legal Aid. The investigator at Legal Aid promised to look into the situation immediately. Subsequent to our contact, the inmate was interviewed by a staff member of Legal Aid and his certificate was issued. The inmate in question expressed his appreciation to our Office and to Legal Aid for their prompt response to his complaints.

Legal Aid staff promised to review the transmission methods of Hepatitis B with their staff in order to alleviate unnecessary concerns about the transmissibility of the disease.

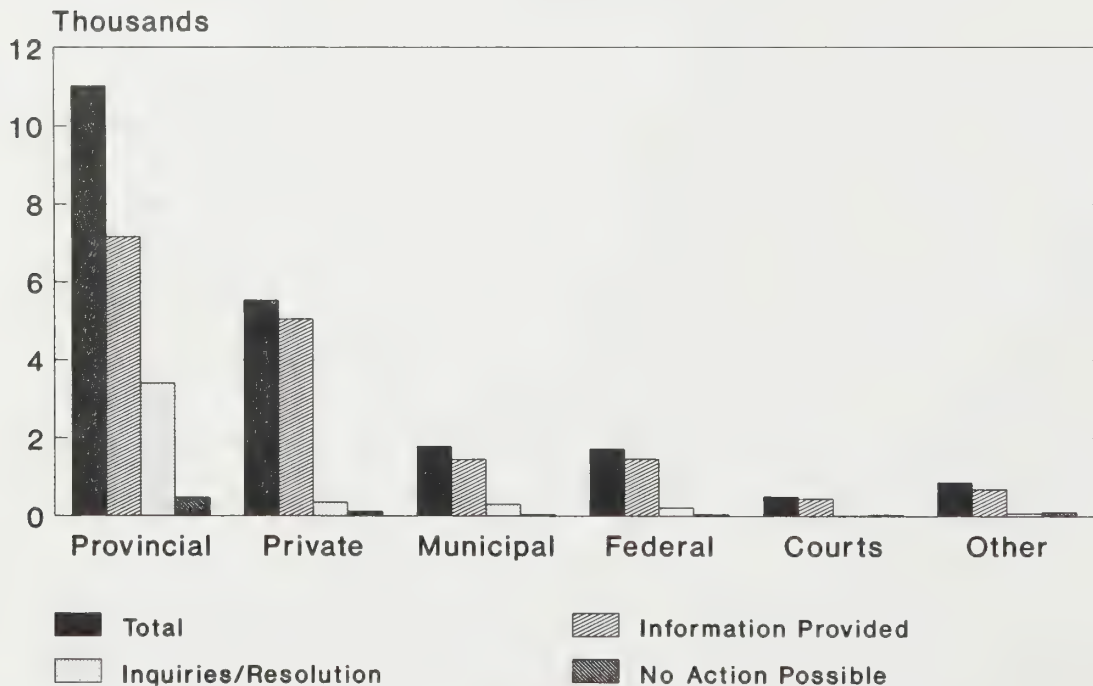
Statistical Information

Statistical Information

Non-Jurisdictional Complaints/Inquiries Fiscal Year Comparison

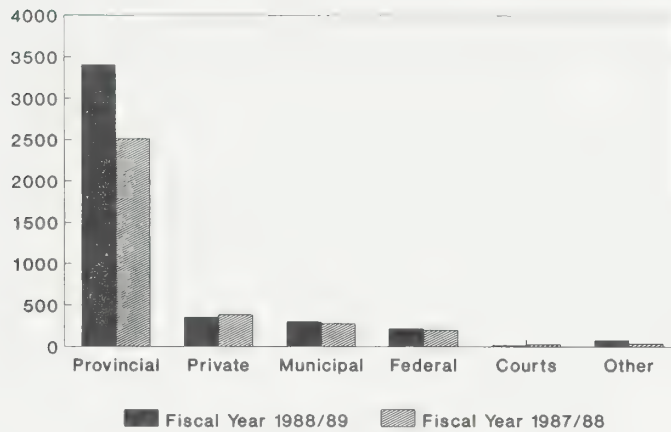


Non-Jurisdictional Complaints/Inquiries Fiscal Year 1988/89 Distribution



Statistical Information

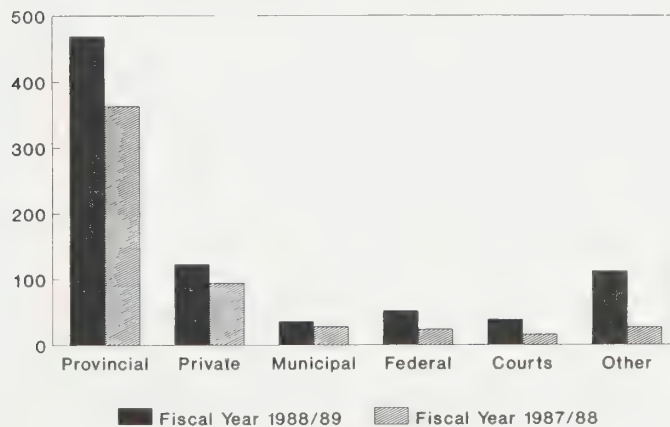
Inquiries Made/Resolution Facilitated Non-Jurisdictional Complaints/Inquiries



Information Provided Non-Jurisdictional Complaints/Inquiries



No Action Possible Non-Jurisdictional Complaints/Inquiries



Statistical Information

DISPOSITION OF JURISDICTIONAL COMPLAINTS FOR FISCAL YEAR 1988/

ORGANIZATION COMPLAINED AGAINST	NO RECOM- MENDATION		COMPLAINT SUPPORTED FORMAL RECOMMENDATION				COMPLAINANT ASSISTED		INDEPEN- DENTLY RESOLVED		UNSUB- STANTIATED	
	1988/89	1987/88	1988/89	1987/88	1988/89	1987/88	1988/89	1987/88	1988/89	1987/88	1988/89	1987/88
AGRICULTURE & FOOD	0	0	0	0	1	0	1	2	0	0	4	12
ATTORNEY GENERAL				2			17	6	3	2	6	10
Ontario Municipal Board			2					8			9	7
Public Trustee							14	11		2	2	3
TOTAL ATTORNEY GENERAL	0	0	2	2	0	0	31	25	3	4	17	20
CITIZENSHIP												
Human Rights Commission		2					7	2		2	22	18
TOTAL CITIZENSHIP	0	2	0	0	0	0	7	2	0	2	22	18
COLLEGES & UNIVERSITIES	0	0	0	0	0	0	5	12	0	1	6	4
COMMUNITY & SOCIAL SERVICES			1	1			22	24	7	7	14	17
Social Assistance Review Board							22	17	1	4	7	14
TOTAL COMMUNITY & SOCIAL SERVICES	0	0	1	1	0	0	44	41	8	11	21	31
CONSUMER & COMMERCIAL RELATIONS	1	0	0	0	0	0	43	15	7	1	35	17
CORRECTIONAL SERVICES	1						9	4	12	5	4	4
Correctional Centres							18	50	23	48	6	5
Detention Centres							50	102	43	61	7	4
Jails			1				59	81	29	67	2	3
TOTAL CORRECTIONAL SERVICES	1	0	1	0	0	0	136	237	107	181	19	16
CULTURE & COMMUNICATIONS	0	0	0	0	0	0	3	2	0	0	0	3
EDUCATION							2	14		2	4	11
Teachers' Superannuation Com.				2	1		13	1	1	1	1	13
TOTAL EDUCATION	0	0	0	2	1	0	15	15	1	3	5	24
ENERGY							4	3			5	3
Ontario Hydro							4	3			5	3
TOTAL ENERGY	0	0	0	0	0	0	4	3	0	0	5	3
ENVIRONMENT	0	0	2	0	0	0	9	7	0	1	8	9
FINANCIAL INSTITUTIONS	0	0	2	0	0	0	32	9	0	1	33	4
GOVERNMENT SERVICES	0	0	0	0	0	0	7	9	5	0	8	7
HEALTH		1	2		2	2	13	7	1		12	21
Psychiatric Hospitals				1			4	14		10	18	14
O.H.I.P.					1		3	1			7	5
TOTAL HEALTH	0	1	2	1	3	2	20	22	1	10	37	40
HOUSING		1	1			1	27	24		2	5	13
Ontario Housing Corporation			1				1	1				
TOTAL HOUSING	0	1	2	0	0	1	28	25	0	2	5	13
INDUSTRY, TRADE & TECHNOLOGY	0	0	0	0	0	0	0	0	0	0	3	1
LABOUR					1		15	11	3		103	57
Workers' Compensation Board			2	14		3	16	12	7		11	25
TOTAL LABOUR	0	0	2	14	1	3	31	23	10	0	114	82
MUNICIPAL AFFAIRS			1	1			1	2			3	1
Municipal Employees Retirement Board							2	1			4	2
TOTAL MUNICIPAL AFFAIRS	0	0	1	1	0	0	3	3	0	0	7	3
NATURAL RESOURCES	0	0	0	1	0	0	21	15	0	1	26	21
NORTHERN DEVELOPMENT & MINES	0	0	0	0	0	0	5	1	0	0	1	3
REVENUE	0	0	0	0	0	0	7	7	2	0	4	5
SKILLS DEVELOPMENT	0	0	0	0	0	0	1	3	0	0	0	0
SOLICITOR GENERAL	0	0	4	1	0	0	4	3	0	0	9	7
TOURISM & RECREATION	0	0	0	0	0	0	0	3	0	1	5	2
TRANSPORTATION	0	0	0	0	0	0	21	20	1	1	12	19
ONTARIO GOVERNMENT OTHER	0	0	0	1	0	0	4	1	0	0	5	1
TOTAL ONTARIO GOVERNMENT	2	4	19	24	6	6	482	505	145	220	411	365

989 WITH COMPARATIVE NUMBERS

INVESTIGATION DISCONTINUED ABANDONED WITHDRAWN SECTION 18						TOTAL	
1988/89	1987/88	1988/89	1987/88	1988/89	1987/88	1988/89	1987/88
5	1	7	4	14	4	32	23
6	2	5	2	22	9	59	33
1	1	3	5	7	13	22	34
1	2	3	3	5	3	25	24
8	5	11	10	34	25	106	91
3	3	7	1	7	7	46	35
3	3	7	1	7	7	46	35
5	6	3	1	7	7	26	31
13	5	5	26	24	58	86	138
2	3	1	4	12	15	45	57
15	8	6	30	36	73	131	195
2	9	6	6	23	19	117	67
8	25	2	18	50	38	86	94
66	95	33	166	288	295	434	659
127	229	53	256	613	613	893	1265
120	203	37	145	466	474	714	973
321	552	125	585	1417	1420	2127	2991
0	0	1	1	1	2	5	8
	1	4	1	22	3	32	32
	1	1	1	22	19	39	38
0	2	5	2	44	22	71	70
1			3	3	3	0	3
1	0	0	3	3	6	13	12
						13	15
1	2	3	9	8	8	31	36
1	2	5	5	37	158	110	179
1	3	3	2	11	17	35	38
8	4	8	10	18	24	64	69
5	21	5	19	4	17	36	96
2	1	1	3	7	5	21	15
15	26	14	32	29	46	121	180
2	7	15	23	16	17	66	88
	1		1	1		3	3
2	8	15	24	17	17	69	91
0	0	0	4	0	1	3	6
1	3	17	10	18	16	158	97
3	4	10	6	6	28	55	92
4	7	27	16	24	44	213	189
1	3	7	3	8	8	21	18
			1		1	6	5
1	3	7	4	8	9	27	23
2	9	14	29	14	14	77	90
1	0	0	2	0	3	7	9
1	3	5	10	6	16	25	41
1	1	0	0	2	1	4	5
0	6	2	10	5	17	24	44
0	1	2	1	1	2	8	10
5	7	15	19	17	30	71	96
0	0	0	2	5	4	14	9
395	664	283	812	1770	1972	3513	4572

GLOSSARY

COMPLAINT SUPPORTED

NO RECOMMENDATION — At times the Ombudsman will support a complaint but decide no recommendation is appropriate given all the circumstances.

FORMAL RECOMMENDATION ACCEPTED — Those complaints where the governmental organization agrees to implement the Ombudsman's recommendation.

FORMAL RECOMMENDATION DENIED — Those complaints where the governmental organization refuses to implement the Ombudsman's recommendation.

COMPLAINANT ASSISTED — Those complaints where the Ombudsman renders assistance and usually involve tangible corrective action taken by the governmental organization.

INDEPENDENTLY RESOLVED — Many complaints are resolved independent of the Ombudsman's involvement. This can occur at any point in the investigative process prior to the Ombudsman issuing a final report.

UNSUBSTANTIATED — Those complaints where the Ombudsman's investigation reveals no grounds to support the complainant's contention.

INVESTIGATION DISCONTINUED — The Ombudsman uses his discretion to discontinue an investigation at any point prior to issuing a final report for a number of reasons:

ABANDONED — Attempts to communicate with the complainant are unsuccessful (eg., complaints from inmates of correctional facilities who are released in the course of our investigation and leave no forwarding address).

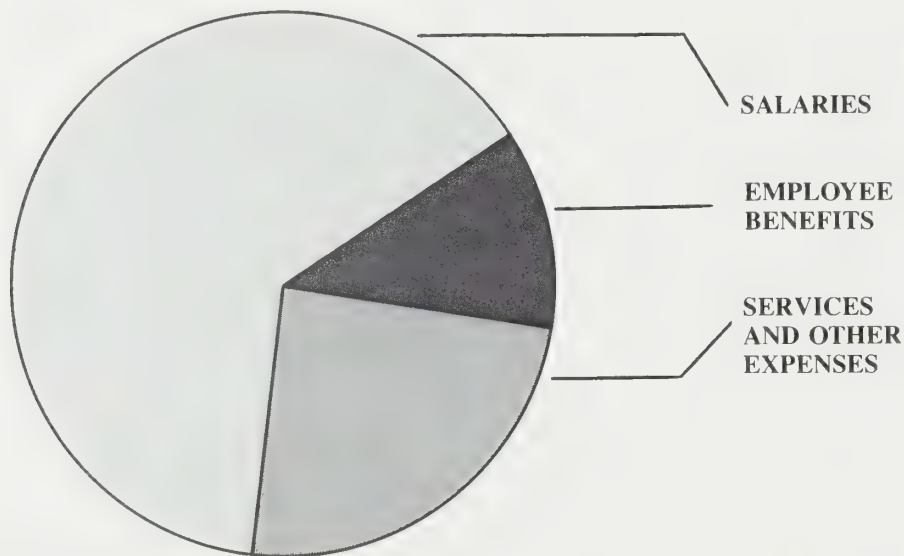
WITHDRAWN — At the request of the complainant. In many cases information is provided to the complainant and, although there is no resolution the complainant does not wish us to pursue the matter.

SECTION 18 — Refers to Section 18 of the Ombudsman Act which allows the Ombudsman the discretion to discontinue if, for example, there is an adequate alternative remedy or the complaint is frivolous or having regard to all the circumstances no further investigation is necessary.

Statistical Information

DISPOSITION OF NON-JURISDICTIONAL COMPLAINTS, INFORMATION REQUESTS/SUBMISSIONS FISCAL YEAR 1988/89, WITH COMPARATIVE NUMBERS

Organization	Information Provided		Inquiries Made/ Resolution Facilitated		No Action Possible		Total		Percent	
	1988/89	1987/88	1988/89	1987/88	1988/89	1987/88	1988/89	1987/88	1988/89	1987/88
Provincial	7156	4827	3405	2512	469	363	11030	7702	51.3	46.4
Private	5058	4546	355	386	123	94	5536	5026	25.8	30.3
Municipal	1458	1250	302	280	36	28	1796	1558	8.3	9.4
Federal	1464	1232	219	200	52	24	1735	1456	8.1	8.8
Courts & Judges	454	413	17	28	39	16	510	457	2.4	2.7
Other	688	335	78	40	112	27	878	402	4.1	2.4
TOTAL	16278	12603	4376	3446	831	552	21485	16601	100.0	100.0



ACTUAL EXPENDITURES FOR THE FISCAL YEAR 1988-89

Salaries	\$4,569,834	Other Services	167,996
Employee Benefits	598,482	Furniture & Office Equipment	48,490
Travel & Relocation	142,887	Computer Equipment & Software	273,888
Telephone, Mailing & Delivery	242,944	Office Supplies & Devices	76,261
Building Rent	586,218	Books & Publications	31,265
Equipment & Other Rentals	106,306	Printing of Reports & Procedures	42,295
Professional Services	63,603	Other Supplies & Equipment	50,142
Security Services	34,032		
Computer Equipment & Software Maintenance	67,057		

TOTAL \$7,101,700

PART II

RECOMMENDATIONS DENIED

Part II is devoted entirely to detailed summaries of cases where the recommendation of the Ombudsman was denied by the governmental organization.

Tables of recommendations outstanding from previous reports are included as appendices.

DETAILED SUMMARY NO. 1

On May 21, 1987 Mr. T contacted one of our representatives and requested that we investigate his objection to a decision of the Workers' Compensation Appeals Tribunal (WCAT) dated May 29, 1986.

By letter dated July 13, 1987, we advised the WCAT of our intention to investigate Mr. T's contention that the decision of May 29, 1986 was, in part, unreasonable in that it dated his entitlement to an allowance for clothing alterations from November, 1985. In its response, dated July 16, 1987, the Tribunal advised that it had no further statement to make and, in due course, photocopies of Mr. T's WCAT file, as well as his Workers' Compensation Board (WCB) claim file, were obtained by our Office.

Mr. T's file was assigned to a member of our investigative staff, who thoroughly reviewed the information contained in Mr. T's claim files and discussed the information with him. As well, she reviewed WCB policy and legislation.

During the course of our investigation, it appeared that Dr. Hill, the former Ombudsman, might support Mr. T's contention and make a report and recommendation that might adversely affect the Tribunal and the accident employer. Therefore, on August 4, 1988 he notified both parties of his views and invited them to make further representations to him if they so wished.

On the basis of the information available to him, Dr. Hill considered the following conclusion and recommendation:

Possible Conclusion:

In view of the broad definition of rehabilitation accepted by the Panel as the basis for allowing Mr. T's appeal, the WCAT decision granting Mr. T entitlement to an allowance for clothing is unreasonable, in part, as it allows this entitlement only from November, 1985. [Reference: *Ombudsman Act*, section 22(1)(b)]

Possible Recommendation:

The WCAT should reconsider with a view to amending its decision so that Mr. T's entitlement to an allowance for clothing alterations dates from December 17, 1982, the date on which his permanent disability was assessed at 85% by the Workers' Compensation Board's (WCB) Rating Committee. [Reference: *Ombudsman Act*, section 22(3)(g)]

This possible conclusion and recommendation were based on the following information.

Mr. T had been employed since April, 1967 as a stockman/receiver for the accident employer. On February 4, 1972, at age 27, he fell from a ramp and caught himself with his left hand. This caused a dislocation of his left shoulder. It was noted that Mr. T had previously experienced a left shoulder dislocation which had been surgically corrected. His claim was accepted by the WCB but, eventually, 50% relief from the Second Injury and Enhancement Fund was granted to the employer because of his pre-existing condition. This was later increased to 75%.

Mr. T returned to work on two occasions (September, 1972 to July, 1973 and February to July, 1974). However, each time, he was unable to continue working due to problems with his shoulder.

These shoulder problems continued to plague Mr. T and over the next 10 years he underwent a series of unsuccessful operations:

1. May 3, 1972 - Putti-Platt repair.
2. October 3, 1973 - Putti-Platt repair.
3. September 25, 1974 - de-rotation osteotomy of the left humerus with the insertion of a metallic plate and screws, and Putti-Platt repair.
4. May 12, 1976 - removal of the metallic plate and screws, and manipulation of the shoulder.
5. September 23, 1976 - left shoulder arthroplasty with removal of the humeral head and the insertion of a Neer prosthesis.

6. July 13, 1977 - total left shoulder replacement due to the failure of the Neer prosthesis.
7. December 2, 1977 - removal of the total shoulder prosthesis which had also failed.
8. February 18, 1981 - left shoulder fusion using a bone graft taken from his left iliac crest.
9. September 15, 1982 - removal of the hardware used in the shoulder fusion.

Mr. T's surgeries were performed by Dr. A, an orthopaedic surgeon at Scarborough General Hospital. Mr. T was admitted to the Board's Downsview Rehabilitation Centre in 1977; however, following a further dislocation of his shoulder, he was discharged on June 8th as unfit to resume work. As well, Mr. T has been seen by Dr. B, a local orthopaedic surgeon, and Dr. C, an orthopaedist in southern Ontario.

In the intervals between operations, Mr. T also had to cope with related complications, such as nerve problems; numbness; muscle atrophy; fractures which would not unite due to loss of bone density; prostheses which tended to sublunate; loss of strength and movement in his left arm; development of a haematoma in his shoulder; paraesthesia of his left hand; spasms; sleeping difficulties; and an addiction to certain medication. As well, Mr. T was, and still is, experiencing pain on a continual basis.

The surgeries eventually left Mr. T with a painful, non-functional, flail (hanging) left shoulder and permanent pseudarthrosis (false joint due to the inability of the bone to form normal callus). His left arm is 4" to 5" shorter than his right arm. The circumference is approximately 3" less in the upper arm and 1-1/2" smaller in the forearm. As well, due to extreme wasting of the muscles, the contour and slope of his shoulder has been drastically affected.

Mr. T remained on temporary total benefits until he was assessed for a permanent disability award on December 17, 1982. At that time, his disability was rated at 85% (70% for his left shoulder and arm; 5% for the donor site of the bone graft; 10% for the psychological effects associated with the injury and the procedures carried out over the years). Full arrears were granted. Although, in 1979, Mr. T had been assessed as having a 35% permanent disability, this was later determined to have been a premature rating, and temporary total benefits were restored and back-dated within a short period of time.

On September 16, 1984 Mr. T wrote to the WCB and requested additional funds to cover his increased clothing costs. Because of his left shoulder and arm configuration, he had to have clothes for the upper half of his body tailor-made. In his letter, Mr. T stated that he had been buying special clothing since March, 1983 when he needed a suit to wear to a funeral and nothing off the rack would fit him. Mr. T later stated that he had had to have some clothing altered as far back as 1976; however, in the beginning, these were mostly minor alterations to sleeve length. As time went on, due to further surgeries and deterioration in his arm and shoulder, the required alterations became more extensive and costly.

Internal memoranda from the WCB's file show that, following receipt of Mr. T's request, a Rehabilitation Counsellor, as well as an Adjudicator and Team Coordinator from the Health Care Benefits Branch, were of the opinion that Mr. T should have received special consideration and been granted an allowance for clothing. Unfortunately, this opinion was not supported at higher levels within the WCB as it was felt that there was no authorization under the *Workers' Compensation Act* to make such a payment.

In denying Mr. T's request, the Board originally relied on the "clothing allowance policy" under section 52 of the Act, which provides for payment for the replacement or repair of clothing worn or damaged when the worker wears a limb prosthesis or brace. As there was no provision dealing with modification to clothing and Mr. T did not have a prosthesis or brace, it was decided that he was not entitled to an allowance. Although evidence was presented that payments for tailoring clothes to accommodate a difference in arm circumference previously had been awarded by an Appeal Board panel in another case, the WCB did not consider this decision as a precedent.

The denial of Mr. T's request was upheld by the Board's Appeals Adjudicator in a decision dated September 4, 1985. The Adjudicator determined that the clothing allowance described under section 52 was not applicable in Mr. T's case. As well, it was decided that section 54 was not applicable as Mr. T was not involved with the Vocational Rehabilitation Branch at the time. Section 54 states, in part, as follows:

To aid in getting injured workers back to work and to assist in lessening or removing any handicap resulting from their injuries, the Board may take such measures and make such expenditures as it may deem necessary or expedient . . .

Mr. T appealed the decision of the Appeals Adjudicator to the WCAT and a hearing was held on February 27, 1986. Evidence was presented that Mr. T, who had been involved from time to time since March, 1975 with the Board's Vocational Rehabilitation Division, had begun an educational upgrading course at a local college. He had enrolled in November, 1985 with a view to taking a real estate course. Also presented in evidence was documentation that he had been purchasing tailor-made clothing from a particular store since June, 1983.

In its decision of May 29, 1986, the WCAT Panel allowed Mr. T's appeal and decided:

The worker is entitled to the difference between the cost of ready-made and tailor-made clothing *from November, 1985, and ongoing*, for the clothing he would wear in public, subject to prior authorization by the WCB. This includes the cost of any clothing bought prior to the start of the worker's upgrading course that was bought for the purposes of the course. [Emphasis added]

In reaching this decision, the Panel accepted that the Board's definition of rehabilitation was quite broad and concluded "that a clothing allowance from the time the worker began the course is appropriate in the circumstances, and satisfies section 54."

The WCB complied with the Panel's decision and, in the absence of receipts, Vocational Rehabilitation Services paid to Mr. T the equivalent of the maximum which would be payable to a worker receiving a "clothing allowance" under section 52 for the period November, 1985 to November, 1986. The Board advised that each November Mr. T would automatically receive a sum equal to the yearly clothing allowance; however, if he were to present receipts for expenditures in excess of this amount, an upward adjustment would be considered.

Mr. T was pleased that his request for additional benefits to offset the cost of his clothing had been granted, but he was not satisfied that the award was dated from November, 1985. Therefore, he requested that the Tribunal reconsider its decision with a view to awarding payment retroactive to 1976. In its letter of June 10, 1987, the Tribunal replied that his request for reconsideration did not meet the strict standard applied to these requests.

In formulating his possible conclusion and recommendation in this case, Dr. Hill considered the information contained in Mr. T's WCAT and WCB claim files, as well as WCB policy and legislation with respect to section 54. He noted that, in reaching its decision, the WCAT had access to and considered this information as well. Indeed, it is stated in the

decision that "the Panel heard and considered evidence under oath by the worker in oral testimony and read the relevant forms, memoranda, reports and medical reports extracted from the WCB file which were marked as Exhibit #1 at the hearing." Therefore, his tentative conclusion was reached, not on the basis of any new evidence, but on his examination of the Panel's reasoning, the legislation and WCB policy.

In support of Dr. Hill's possible conclusion and recommendation, the findings of our investigation and his observations were summarized as follows:

The Panel had noted that Mr. T's whole left side was altered by his disability and that this would be apparent when he went out in public. It had also been noted that this had resulted in "understandable problems with anxiety and depression", and the Panel was of the view that "appropriate clothing may be an important step in developing the worker's sense of self-confidence and social acceptability."

The Panel had also noted the Board's definition of rehabilitation, as stated in its policy, as follows:

... it is the cultivation, restoration and conservation of human resources, assisting those who are handicapped by disease, disability or social maladjustment to achieve a state of maximum well-being.

The Panel had accepted this as a broad definition of rehabilitation and concluded that payment for additional clothing costs could be made to Mr. T under section 54. However, the Panel interpreted the definition further and stated:

However, the Panel is concerned that the clothing allowance should not be restricted to the period that the worker is attending the course. To so restrict the allowance is to apply a narrow definition of rehabilitation which is contrary to the Board's broad definition. The Board's definition can be summarized as assistance in restoring a handicapped worker's ability to function in the workforce or elsewhere . . . The Panel finds that it is important for the worker to be suitably dressed in order to lessen his handicap and to function properly. Thus, we conclude that the worker should continue to be provided with a clothing allowance in the future once his courses are completed.

This conclusion is also in keeping with section 54 of the Act since it will aid in lessening the worker's handicap which has resulted from his work injury.

Despite its opinion that the allowance should not be restricted to the period of the training course, the Panel, in deciding that the allowance should date from the time when Mr. T began his classes, nevertheless tied the award to the course and to his re-employment efforts. Dr. Hill was of the tentative opinion that this was unreasonable.

The Panel's reasoning in providing for the continuation of the allowance beyond the completion of his course applies equally well to the time prior to November, 1985. In its decision, the Panel offered no clear reason for choosing the date it did, thereby implying that the start of the upgrading course was the basis for its decision. Dr. Hill believed that the Panel's decision in this matter was illogical and inconsistent with its own reasoning.

Dr. Hill shared the Panel's opinion that the Board's definition of rehabilitation is a broad one and that section 54 provides the authority for Mr. T to receive a special clothing payment. When it originally denied Mr. T's request, the WCB did so because it believed section 54 was not applicable as he was not involved with the Vocational Rehabilitation Division at the time. The WCAT Panel later determined that Section 54 did provide the necessary authority and that the special allowance should not be restricted to the period of his course; however, due consideration was not given to selecting the most appropriate date for the commencement of the award.

On reviewing the legislation, we found no stipulation in section 54 that the worker must be cooperating with, actively involved in, or available for a vocational rehabilitation program. However, the legislation does place these qualifying criteria on certain other benefits, such as the receipt of a supplement under section 45(5). By omitting such a restriction under section 54, Dr. Hill believed that it was not intended that the Board's ability to extend assistance "in lessening or removing any handicap resulting from [the worker's] injuries" should be hampered or limited by the worker's re-employment efforts. Expenditures may be made under section 54 as the Board "may deem necessary or expedient."

The Board's policy regarding section 54 supports this interpretation, as is demonstrated by the following excerpt from its Manual:

The philosophy of vocational rehabilitation which has been adopted by the Board is:

The cultivation, conservation and restoration of the knowledge, skills, attitudes and physical well-being of the injured worker.

The use of all appropriate sciences and disciplines to aid persons handicapped by industrial disease, disability *and/or social maladjustment* arising out of the condition.

The provision of Vocational Rehabilitation services to enable the injured worker to become capable of pursuing gainful employment *and/or to aid in lessening any handicap resulting from the compensable injury or condition.* [Emphasis added]

By the use of "and/or" the Board's philosophy clearly separates the worker's pursuit of gainful employment from aid in lessening any handicap. The Board's policy also sets out 10 definitions of workers who are eligible for section 54 benefits. Only one of these states that the worker must be cooperating in the Vocational Rehabilitation process, and that definition does not apply to Mr. T as it concerns workers who are temporarily, partially disabled and who may not have any indication of permanent disability. Mr. T is, of course, permanently disabled as a result of his injury, and had been awarded an 85% pension by the time he made his request for the clothing allowance.

As indicated in the Board's philosophy, aid in enabling workers to return to gainful employment is only one of many services which can be provided under section 54. Therefore, the legislation and Board policy provide the means to furnish Mr. T with additional funds to cover the increased costs of his clothes, without necessitating his active involvement in a Vocational Rehabilitation program. Even if this were not the case, as the Board's psychiatrist, Dr. F, noted after examining Mr. T in December, 1982:

His reluctance [to be involved in retraining] is perhaps understandable in view of the constantly recurring surgeries, hospitalizations, and investigations as well as the chronic pain which he has undoubtedly suffered for years.

Having tentatively concluded that November, 1985 was not a reasonable date for the Panel to have chosen for the commencement of Mr. T's allowance, Dr. Hill addressed the question of what would be an appropriate date. Various dates presented themselves: the dates of Mr. T's many surgeries; the date of his first letter to the WCB in 1984 requesting an allowance; the date in 1983 on which he stated he first bought a tailor-made suit jacket; the 1976 date which he requested when he asked the WCAT to reconsider its decision; the pension assessment date in 1982.

In Dr. Hill's view, the logical date for such an award to begin was December, 1982 when Mr. T was assessed by a team of Board doctors and granted an 85% permanent disability award. Although Mr. T's deformity existed prior to this, it was on this date that the Board acknowledged that his condition was permanent and that the disability was substantial. The shortening of his left arm and the smaller circumference were confirmed by Drs. D and E, as well as "very marked and extreme contour change of the left shoulder region due to very profound and almost complete wasting of the shoulder girdle musculature."

At that time, Mr. T had also been seen by the psychiatrist, Dr. F, who noted "the disfiguring effects of the multiple unsuccessful surgeries." Ten per cent of Mr. T's permanent disability award is to compensate him for chronic low-grade depression and an anxiety state associated with his medical treatment over the years. Therefore, it appeared that the permanent disability assessment date would have been an appropriate time to have determined that to supply Mr. T with the means to purchase suitable clothing would have been important to his self-esteem and social rehabilitation.

Also, the permanent disability assessment is evidence that by December, 1982 Mr. T's condition was deemed to have stabilized. The WCB commonly conducts these assessments when treatment is concluded, the condition is stable and maximum recovery from a medical standpoint has occurred. In accordance with the Board's policy on permanent disability ratings, the applicability of supplementary awards is normally addressed at the time of the rating. For instance, where a worker has entitlement to a "clothing allowance" under section 52, this would be covered at the time of the rating in the interview with the Board's Pension Adjudicator.

Dr. Hill also noted that Mr. T's last surgery occurred in September, 1982. Prior to this, his condition had changed with each successive surgery. He had also spent a great deal of time with his arm in a sling. It would have been difficult to choose a date for the commencement of clothing payments during the period from 1972 to 1982 as his condition was not stable and he underwent various forms of medical treatment. As well, Mr. T acknowledged that his earlier alteration costs were of a more minor nature. He did not incur significant expense until early 1983 which would be in keeping with an award dating from December, 1982.

For these reasons it was Dr. Hill's tentative opinion that the pension assessment date, December 17, 1982, presented as the most reasonable date on which to have awarded Mr. T his special allowance for clothing. Therefore, he tentatively concluded that the WCAT decision was, in part, unreasonable in that it dated the award from November, 1985.

On October 13, 1988 we received a letter from the employer's representative seeking clarification that any additional benefits Mr. T might be awarded would be charged to section 54 of the *Workers' Compensation Act*. The investigator responded that, if these additional benefits were awarded, they would be provided under section 54. No further submissions were received from the employer regarding Dr. Hill's tentative conclusion and recommendation.

The Tribunal's response, dated September 29, 1988, was received from Mr. Ron Ellis, Chairman, on October 17, 1988. Unfortunately, Mr. Ellis did not address the merits of Mr. T's case. Rather, he advised us of the WCAT's "appropriate institutional response" to letters which we might issue pursuant to section 19(3) of the *Ombudsman Act*. Mr. Ellis wrote as follows:

In my view, it would not be appropriate for the Appeals Tribunal to make representations concerning your possible recommendation. This would in effect constitute either a defence of the Tribunal's decision (which we cannot properly embark upon since the Tribunal's reasons for its decision are set out in the decision itself) or concessions respecting the merits of the criticism contained in your letter, — concessions which we, of course, cannot make without resorting to an exercise of our power to reconsider involving the complete process that we have established for that purpose.

Accordingly, after careful consideration, I have come to the view that the appropriate position for the Appeals Tribunal is to refrain from making representations concerning the criticisms at this stage of your process. Again, we can only refer to and rely on the reasons set out in the decision.

Mr. Ellis reserved his final decision on this matter until his receipt of the Ombudsman's final report.

In reviewing this matter, Dr. Hill considered administrative law and natural justice in relation to quasi-judicial tribunals. Although he believed that Mr. Ellis may have been taking an excessively rigid and narrow view on this matter, he nevertheless recognized that Mr. Ellis would not wish the Tribunal to take any action which would violate two fundamental precepts of natural justice: namely, a fair hearing and an unbiased decision-maker. However, we must not make the assumption that even the most expert and principled tribunals are infallible. If that were the case, there would be no need for courts of review or Ombudsmen.

This case illustrated an incompatibility between the Ombudsman process and the administrative law principles underpinning quasi-judicial Tribunals. We consider the Ombudsman's mandate to be remedial in terms of the merits of each case and the types of recommendations made. Unlike reviewing courts, we do examine the merits, as well as the process, of a case and it is open to the Ombudsman to decide that a decision of a provincial governmental organization may be wrong or unreasonable on its merits. However, Dr. Hill had no wish to create an impression of bias or prejudice on the part of the Tribunal by making a recommendation which, if implemented, might be considered a breach of its principles.

In the absence of any representations respecting the merits of this case, Dr. Hill remained of the view that the Tribunal gave no good reasons for dating Mr. T's award from November, 1985 and, in fact, failed to follow its own reasoning and did not adequately address itself to the issue of the most appropriate date for the commencement of the award. For the reasons outlined in his report, it was Dr. Hill's opinion, pursuant to section 22(1)(b) of the *Ombudsman Act*, that the decision of May 29, 1986 was unreasonable with respect to the date chosen for Mr. T's award to begin. He believed that December 17, 1982, the date on which his permanent disability was assessed at 85% by the WCB, was the logical date for the commencement of the award.

Our understanding is that, pursuant to sections 76 and 86(m) of the *Workers' Compensation Act*, the WCAT may, at any time it considers it advisable to do so, reconsider any decision made by it and vary, amend or revoke such decision. As well, in accordance with the Tribunal's Practice Direction No. 8, reconsideration may originate from the Tribunal rather than from one of the parties of record.

Therefore, Dr. Hill recommended, pursuant to section 22(3)(g) of the *Ombudsman Act*, that the WCAT appoint a Reconsideration Panel as expeditiously as possible to reconsider its decision of May 29, 1986 on the basis of the information contained in his report.

Dr. Hill's report was sent to the WCAT and to the Minister of Labour on December 6, 1988. The Tribunal's response was received by letter dated January 6, 1989. The Chairman of the WCAT explained the two-stage procedure which has been adopted by the WCAT in exercising its reconsideration powers. The first stage is a consideration of whether or not it is "advisable" to re-open and again consider the case. This is referred to by the WCAT as the "threshold question". The second stage is the actual reconsideration, if it has been decided that this would be "advisable". The Chairman stated that the finality of WCAT decisions is in the interest of workers, employers and the public, and this makes the threshold decision very important. It was noted that the Ombudsman's recommendation, if implemented, would take the Tribunal automatically past the threshold question to the reconsideration itself; however, the Chairman wrote that the Tribunal cannot refer a matter directly to a reconsideration panel without first deciding that it is "advisable" to do so. Therefore, in response to Dr. Hill's recommendation, the Chairman proposed the following:

1. The Tribunal Chairman will establish a Tribunal hearing panel for the purpose of determining the following generic question (hereafter referred to as the "first question"):

1. Is the fact that the Ombudsman has issued an investigative report that is supportive of a complaint to the Ombudsman concerning the merits of a Tribunal decision sufficient reason, in and of itself and irrespective of the Report's [sic] content, for the Tribunal to conclude that it is advisable for the Tribunal to engage in a reconsideration of that decision?

2. If the answer to that question is yes, then, pursuant to Practice Direction No. 8, the Tribunal Chairman will next establish a panel for the purpose of reconsidering Decision No. 95 in the [sic] light of your investigative report and determining whether, in light of your report, that decision should be varied, amended or revoked, or left unchanged.

3. If the answer to the first question is no, then the Tribunal Chairman will establish a panel to make the usual threshold decision in response to the following second question:

2. Does the content of the Ombudsman's report on *Decision No. 95* provide sufficient reason for the Tribunal to conclude that it is advisable for the Tribunal to engage in a reconsideration of that Decision?

4. If the answer to this second question is yes, the same panel will proceed to reconsider *Decision No. 95* and to determine whether, in light of the Ombudsman's report, the decision should be varied, amended or revoked, or not changed. If the panel's answer to the second question is no, then that, of course, will be the end of the matter, as far as the Tribunal is concerned.

While we appreciated the Tribunal's concerns regarding the manner in which it should deal with the Ombudsman's report, the Ombudsman's obligation is to fulfill the duty and function entrusted to him/her by the Legislature under the *Ombudsman Act*. Therefore, we did not believe that it was appropriate to wait while the WCAT implemented an elaborate process to determine whether reconsideration was appropriate. The extensive procedures suggested by the Chairman could not, in our opinion, provide a prompt resolution of Mr. T's case. Therefore, pursuant to sections 22(4) and (5) of the *Ombudsman Act*, Dr. Hill referred the matter to the Premier on January 17, 1989. Mr. T was also advised of the results of the investigation.

Subsequently, in order to minimize any delay and inconvenience to those involved, the WCAT decided that one panel would hold a hearing wherein it would consider all the issues set out in the Chairman's response to Dr. Hill's report, rather than establish separate panels and hearing dates to answer each question.

It was suggested that the Ombudsman might want to make submissions to this hearing panel. However, I advised the WCAT that, in view of the Ombudsman's duty of impartiality and the fact that any decision of the Tribunal could potentially be investigated by my Office, it followed that we could not be a party to any Tribunal hearing. Such participation would taint the objectivity central to the Ombudsman's mandate.

The Tribunal's hearing was held on April 13, 1989, prior to the publication of this Annual Report, and some members of my staff attended as observers. At the time this publication was prepared, the WCAT had not yet issued its written decision. However, an oral decision was given at the hearing on the "first question". The panel decided that an Ombudsman report supportive of a complaint is not sufficient, in and of itself, for the Tribunal to bypass its threshold question and conclude that it is advisable for it to reconsider any previous decision.

I am not convinced that the WCAT's response to the recommendation of the former Ombudsman has been adequate and appropriate. However, on receipt of the panel's written decision, I will review the matter to determine what further action on my part may be appropriate.

OMBUDSMAN STAFF

TO MARCH 1989

AINSLIE, Margaret
ALLAN, John
ARKELL, Tim
BAKER, Betty
BAUCHMAN, Laurel
BENSON, Heather
BERNIER, Suzanne
BIDELL, Joan
BISCHOPING, Johanna
BLENKINSOP, Rosemarie
BOOTHBY, Paula
BOURNS, Maureen
BROOKS, Paul
BROOKWELL, Larry
BROWN, Anne
BRYANT, Dale
BUCKSTEIN, Elaine
BURROWS, Patricia
BYLSMA, Klaas
CARL, Mary
CARLINO, Gerry
CASSON-ROBIN, Barbara
CEYSSSENS, Paul
CHAMBERS, Sharon
CHEECHOO, Gilbert
CHIASSON, Lucille
CHIC, Jacquie
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COOLMAN, Joyce
CORION, Margaret
CROSSLEY, Barbara
CUMMINGS, Penny
DEAR, Rosie
DEARDEN, Sylvana
DEODAT, Zalina
DRAWBELL, Steven
DUONG, Chinn
EPRILE, Stephen
EVANS, Cathy
FARNCOMBE, Peter
FENTON, Mary Jane
FITZPATRICK, John
FRIEDMAN, Lois
FURINO, Susan
GABRIEL, Liz
GERHARD, Perry
GIACOMINI, Sergio
GRIFFIN, Dianne
HARRISON, Joan
HASLAM, Sue
HILL, Daniel

HIRST, Barbara
HOBSON, Jim
HOFFMAN, Judith
HOLMES, Jackie
HUNG, Elsa
IAHTAIL, Mary-Lou
IAROCCI, Jacquelynne
IRONS, Alison
ISOVSKI, Azire
JANMOHAMED, Shirin
JONES, Christine
KATAMAY, Olga
KEIL, Martha
KERSHAW, Janet
KIESECKER, Barbara
KING, Dianne
KNUDSON, Inez
KRAY, Jansen
KUTA, Elizabeth
LAMPKIN, Lorna
LA ROSA, George
LANTHIER, Elise
LATINCIC, Mary Ann
LEBLANC, Sharon
LEE, Allan
LEE, Barbara
LEE, Judith
LEGARDO, Lourdes
LOGAN, Rosemary
LUCAS, Lourine
LYNCH, Gwen
MARCHAND, Marie
MARKIEWICZ, Eva
MARTIN, Christine
MAY, Laurel
MCCOLLIN, Phyllis
MCKAY, Catherine
MCLEOD, Maret
MENNIE, Florence
MESLIN, Eleanor
MILLS, Allan
MORRISH, Ginette
MORRISON, Gail
MORTON, Margret
MURRAY, Dolly
MURPHY, Mary
NASIR, Josie
NICHOLSON, Sherrie
ORTVED, Janet
PEASE, Irv
PELLETIER, Allan

PENFOLD, Kathy
PFAFF, Gail
PRESNER, Matilda
RAJASINGHAM, Peter
ROBERT, D'Arcy
RODGERS, Faye
ROBSON, Donna
ROMAN, Josie
ROSE, Janet
SCHULZ, Wolfgang
SEALEY, Carol
SEMENCIW, Joe
SHANKOWSKY, Harry
SHECHTER, Sandra
SKENE, Tom
SORA, David
SOUSA, Maria
STANSFIELD, MaryAnn
TENENHOUSE, Lee
THEN, Milan
THOMPSON, Kim
THOMS, Joanne
TONER, Donna
TORRANCE, William
VAN KLEEF, Joy
VIRC, Elizabeth
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Chairman

Scarborough

Mr. M.L. Bossy
Vice-Chairman

Chatham Kent

Ms. M. Bryden

Beaches-Woodbine

Mr. D.A. Carrothers

Oakville South

Mr. D. Cousens

Markham

Mr. J.D. Henderson

Etobicoke-Humber

Ms. L. LeBourdais

Etobicoke West

Mr. T. Lupusella

Dovercourt

Mr. K. MacDonald

Prince Edward-Lennox

Mr. E. Philip

Etobicoke-Rexdale

Mr. J. Pollock

Hastings-Peterborough

CLERK: Mr. Franco Carrozza

STAFF:

Mr. J. P. Bell, Counsel

Ms. Jennifer Wilson, Research Officer
Legislative Research Services

APPENDIX A

MINISTRY OF THE ATTORNEY GENERAL

Criminal Injuries Compensation Board

Special Report Mr. B	1. That the Criminal Injuries Compensation Board award appropriate compensation to the complainant for loss of income and pain and suffering as a result of the injuries sustained by him.	16 Rec. 7	That the Criminal Injuries Compensation Board award appropriate compensation to the complainant for loss of income and pain and suffering as a result of the injuries sustained by him.	A Divisional Court order has been obtained and the matter will be reheard by the Criminal Injuries Compensation Board, once updated medical information is available.
	2. That the Board establish guidelines to assist members in applying section 17(1).	16 Rec. 8	That the Criminal Injuries Compensation Board provide full written reasons to applicants for all decisions made under the <u>Compensation for Victims of Crime Act</u> .	
	3. That the Board provide full written reasons to applicants for all decisions made under the <u>Compensation for Victims of Crime Act</u> .	16 Rec. 9	That the <u>Compensation for Victims of Crime Act</u> be amended by deleting the words "for payment of compensation" from section 25(1).	
		16 Rec. 10	That the Criminal Injuries Compensation Board consent to an order of the Divisional Court extending the time for filing an appeal under the <u>Compensation for Victims of Crime Act</u> ; that the Board further consent to an order of the court setting aside its order of December 1, 1982 denying compensation to the complainant in this case and ordering that a new hearing be conducted; and that the Board bear the legal costs of this appeal along with the reasonable travel and legal expenses of the complainant in attending the new hearing.	

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	CONSIDERED IN STANDING COMMIT- TEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
<p align="center">MINISTRY OF THE ATTORNEY GENERAL Criminal Injuries Compensation Board (cont'd)</p>				
Special Report Ms. D	<p>1. That the Criminal Injuries Compensation Board award appropriate compensation to the complainant for loss of income and pain and suffering as a result of the injuries sustained, as well as additional costs, including return bus fare to Alberta from the hearing in Toronto, as well as reasonable babysitting costs to allow the complainant to attend the hearing in Toronto.</p>	16 Rec. 11	<p>That the Criminal Injuries Compensation Board award appropriate compensation to Ms. D for loss of income and pain and suffering as a result of the injuries sustained by her, as well as additional costs including return fare to a hearing in Toronto (if necessary) and reasonable babysitting expenses.</p>	<p>A Divisional Court order has been obtained and the matter will be reheard by the Criminal Injuries Compensation Board, once updated medical information is available.</p>
	<p>2. That the Board establish guidelines to assist members in applying section 17(1).</p>	16 Rec. 12	<p>That the Board provide full written reasons to applicants for all decisions made under the <u>Compensation for Victims of Crime Act</u>.</p>	
	<p>3. That the Board establish guidelines to assist members in dealing with applications by battered spouses to enable Board members to become sensitized to the issues involved.</p>	16 Rec. 13	<p>That the Criminal Injuries Compensation Board consent to an order of the Divisional Court extending the time for filing an appeal under the <u>Compensation for Victims of Crime Act</u>; that the Board further consent to an order of the court setting aside its order of November 24, 1982 denying compensation to the complainant in this case and ordering that a new hearing be conducted; and that the Board bear the legal costs of this appeal along with the reasonable travel and legal expenses of the complainant in attending the new hearing.</p>	
	<p>4. That the Board provide full written reasons to applicants for all decisions made under the <u>Compensation for Victims of Crime Act</u>.</p>			

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	CONSIDERED IN STANDING COMMIT- TEE REPORT NO.	RECOMMENDATION DENIED	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
MINISTRY OF EDUCATION					
Special Report Mrs. H	1. That the Attorney General, in conjunction with the Minister of Education, take appropriate steps to amend the Teachers' Superannuation Act, R.S.O. 1980, c.494 and the Teachers' Superannuation Act, 1983, c.84 to be in compliance with section 15(1) of the Charter of Rights and Freedoms, effective April 17, 1985; and	17 Rec. 4		That the Ministry of Education cause the Teachers' Superannuation Commission to pay Mrs. H survivor benefits as of August 8, 1985, and that the Ministry of Education, within three months of this motion, on or about November 22, 1988, report to this Committee on the advisability of extending this benefit as a matter of right to spouses of Teachers' Superannuation Fund members adversely affected.	The Ministry has advised that relevant amendments to the Teachers' Superannuation Act will be recommended to Cabinet in the near future. No payments have been made.
	2. That following these amendments, the Teachers' Superannuation Commission take the necessary steps to issue a dependent's allowance to Mrs. H in accordance with section 36(1) of the Teachers' Superannuation Act, R.S.O. 1980, c.494, effective from the first day of her inquiry for same.	17 Rec. 5		That the Committee direct the working group (as set up by the Minister of Education) to deal with the issue of Mrs. H's pension and the general issue of pensions, as soon as possible.	
	and, in the alternative:	17 Rec. 6		That the Minister of Education, in conjunction with any other governmental organization he deems necessary, issue an <u>ex gratia</u> payment to Mrs. H as soon as possible, effective from the first day of the month following the date of her inquiry for same, until the amended provision is in force. Such a payment can be made through the annual budgetary process,	
	1. That the Attorney General, in conjunction with the Minister of Education, take appropriate steps to amend the Teachers' Superannuation Act, R.S.O. 1980, c.494				

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMIT- TEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS

MINISTRY OF EDUCATION
(cont'd)

and the Teachers' Superannuation Act, 1983, c.84 to remove the provision which he has found to be improperly discriminatory; and

2. That the Minister of Education, in conjunction with any other governmental organization he deems necessary, make spousal payments to any other surviving spouses who have been denied a full dependent or survivor allowance by the Teachers' Superannuation Act or the Teachers' Superannuation Act, 1983, payable from the first day of the month following the date of her inquiry for same, until the amended provision is in force. Such payment can be made by providing for it thorough the annual budgetary process, so that no question will arise as to the authority of the Ministry to make the payments. Also, he recommended that payments be made to any other surviving spouses who have been denied a full dependent's or survivor allowance by the Teachers' Superannuation Commission pursuant to the Teachers' Superannuation Act or the Teachers' Superannuation Act, 1983 payable from the first day of the month following the date of their request for a benefit as a result of his recommendation.

so that no question will arise as to the authority of the Ministry to make the payments; and

That the Minister of Education, in conjunction with any other governmental organization he deems necessary, make spousal payments to any other surviving spouses who have been denied a full dependent or survivor allowance by the Teachers' Superannuation Act or the Teachers' Superannuation Act, 1983, payable from the first day of the month following the date of their request for a benefit as a result of this recommendation.

OMBUDSMAN
REPORT
NUMBER

CONSIDERED IN
STANDING COMMIT-
TEE REPORT NO.

RECOMMENDATION DENIED

RECOMMENDATION OF COMMITTEE

PRESENT STATUS

MINISTRY OF THE ENVIRONMENT

11	10	That the Minister cancel his decision to accept the adjudicator's recommendation not to pay the complainant's claim for interest; that the Minister accept and consider the claim as one properly made under the <u>Public Works Creditors Payment Act</u> .	12	Rec. 2	That the Minister of the Environment accept in principle that the Crown may, in the appropriate circumstances, pay a claimant interest due pursuant to a term of a contract with a contractor; that the Minister consider the merits of the complainant's claim for interest owing on the principal amount in question and formulate a decision whether or not to pay the claim.	In May, 1988, the Deputy Minister and the Acting Director of Legal Services for the Ministry appeared before the Committee and undertook to initiate the arbitration process within a week. The process is now underway.
			13	Rec. 2	That an independent adjudicator be appointed to assess the matter of whether or not interest is owed to the complainant.	
			15	Rec. 1	That the adjudication be styled as a hearing in the ordinary course, with an opportunity given to the parties to call and lead any evidence they consider appropriate;	
					That the principal amount upon which interest is to be calculated be clearly stated as a sum not to exceed \$27,730.00;	
					That the rate of interest applied by the adjudication be determined in	

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMIT- TEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
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MINISTRY OF THE ENVIRONMENT
(cont'd)

accordance with the Courts of Justice Act; and

That the costs of adjudication be paid by the Ministry, except for the complainant's legal costs.

MINISTRY OF GOVERNMENT SERVICES

11 3 That the complainant be paid reasonable compensation for his loss by either the Ministry of Government Services or the Board.

17 Rec. 1 That the Clerk of the Committee notify the Minister of the Ministry of Management Board to place in the Estimates for 1988-89, the Ministry of Government Services, Public Services Superannuation Board, the sum of \$2,239.91 plus interest at 6.5% calculated annually from November 30, 1967 to the date payment is made to Mr. O.

The Committee's recommendation has been implemented. Mr. O received \$8,923.57 in March, 1989.

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY	CONSIDERED IN STANDING COMMIT- TEE REPORT NO.	RECOMMENDATION DENIED	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
<u>MINISTRY OF HEALTH</u>					
Special Report Mr. K, Mr. & Mrs. L, Ms. M	That the Ministry amend Ontario Reg. 596/85 in order to remove all age restrictions pertaining to the provision of companion travel grants under the Northern Health Travel Grant Program.	17 Rec. 2	That the Ministry amend Ontario Reg. 596/85 in order to remove all age restrictions pertaining to the pro- vision of companion travel grants under the Northern Health Travel Grant Program.	The Ministry has advised the Ombudsman that the whole pro- gram under which travel grants are provided for those requir- ing health care is under review.	
<u>Ontario Health Insurance Program</u>					
Special Report Mrs. J	That the Ministry of Health/OHIP reconsider including in the Sched- ule of Benefits the cost of donor sperm as part of the artificial insemination procedure currently covered under the Schedule of Benefits.	17 Rec. 3	That the Ministry of Health arrange to provide donor sperm to Mr. and Mrs. J at no cost as soon as an acceptable test has been developed to ensure that donor sperm is free from the AIDS virus.	The Ministry advises that it is developing a policy for the provision of semen to Ontarians at no cost, and that the policy will be implemented in 1989.	

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMIT- TEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
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MINISTRY OF HOUSING

Ontario Housing Corporation

7	18	1. That OHC reconsider C Limited's claim as assessed by the referee and rule on the correctness of the assessment;	8	OHC advised the Committee in its hearings on the Ombudsman's Seventh Report that the recommendation would be implemented. The Ombudsman and the Committee agreed that the response of the governmental organization was adequate.	In January, 1988, it was learned that the recommendation had never been implemented, and this matter was brought to the present Standing Committee's attention. C Limited received a cheque for \$18,196.57 in August 1989.
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2. That OHC reconsider the mortgage in question as being a collateral security and not taken by C Limited in lieu of cash and not altering the then existing obligations between C Limited and W Limited;

3. That OHC not deny C Limited's claim on the basis that it was not a claimant or a contractor as defined by the Public Works Creditors Payment Act and accept the referee's definition thereof; and

4. That OHC recommend that the claim as assessed by OHC be paid by the surety.

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	CONSIDERED IN STANDING COMMIT- TEE REPORT NO.	RECOMMENDATION DENIED	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
<div data-bbox="311 1274 331 1634">MINISTRY OF NATURAL RESOURCES</div>					
Special Report Chief B	<p>1. That the Ministry of Natural Resources employ a consultative procedure in future when dealing with perceived contraventions of section 8 of Regulation 414 under the Game and Fish Act by directly informing relevant parties, including each licensee, of delinquent reports and confirming all contact in writing; and</p> <p>2. That the Ministry of Natural Resources reimburse the fishermen of the fishery who were charged and convicted for the costs of their legal expenses, and those fishermen who were convicted should also be reimbursed the amount of their fines, once they have been paid.</p>	16 Rec. 14	<p>1. That the Ministry of Natural Resources employ a consultative procedure in future when dealing with contraventions of section 8 of Reg. 414 under the Game and Fish Act by directly informing the individual Band licensees in question and confirming all contact in writing; and</p> <p>2. The Committee expressed grave concern at the Ministry of Natural Resources' not responding to the Ombudsman's section 19(3) report with all the facts that were available to the Ministry at that time.</p>	<p>The Ministry has advised that it has changed its practice and now sends out notices directly to individual licensees.</p>	

APPENDIX B

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3)(d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS

MINISTRY OF GOVERNMENT SERVICES

2	60	That the Ministry pay the complainant the sum of \$1,318.00 for his losses and legal expenses.		The Ministry of Government Services stated that it had no authority to comply with the recommendation.	3, Rec. 34	That the Audit Act and the Financial Administration Act be amended to provide that when such a recommendation is made by the Ombudsman after all necessary and appropriate requirements of the Ombudsman Act have been adhered to by his Office, and when entirely accepted by the governmental organization, "a lawful authority" is created for such money to be paid by the governmental organization out of the Consolidated Revenue Fund. Further, that the Ombudsman's Office and the Ministry of Government Services resume their discussions on the merits of the Ombudsman's recommendation and that the results of these discussions are to be reported to the Standing Committee.	The Ministry of Treasury and Economics has responded and proposed that the Ombudsman Act is the more appropriate statute for the amendment, since the purpose of the amendment directly relates to procedure under that Act. The Ministry proposed that the Ombudsman Act be amended as follows: "Where the Ombudsman, in a report under subsection 22(3), recommends to the governmental organization to whom the report is made that the governmental organization pay a specified sum to or for the benefit of the complainant to reimburse the complainant for an ascertainable financial loss suffered by him in the matter complained of, and where the Minister to whom a copy of the report is sent under that subsection accepts the recommendation at the amount mentioned therein or at a lesser amount acceptable to the Ombudsman and there is no authorization, apart from
						That the Ombudsman Act be amended as follows: "Where the Ombudsman, in a report under subsection 22(3), recommends to the governmental organization to whom	

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY	RECOMMENDATION UNDER SECTION 22(3)(d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS

MINISTRY OF GOVERNMENT SERVICES

(cont'd)

<p>the report is made that the governmental organization pay a specified sum to or for the benefit of the complainant to compensate the complainant for an ascertainable financial loss suffered by him, and where the Minister to whom a copy of the report is sent under that subsection accepts the recommendation at the amount mentioned therein or at a lesser amount acceptable to the Ombudsman and there is no authorization, apart from this section, for the payment of the sum so agreed on, such sum shall, where it is less than \$1,000 and has been ascertained as required by this section, be paid by the Treasurer out of the Consolidated Revenue Fund on the authorization of the Minister concerned, and where the sum so agreed on is \$1,000 or more, it shall be paid by the Treasurer out of the Consolidated Revenue Fund on the order of the Lieutenant Governor in Council approving such payment.</p>	<p>this section, for the payment of the sum so agreed on, such sum may, where it is less than \$1,000, be paid by the Treasurer out of the Consolidated Revenue Fund on the authorization of the Minister concerned, and where the sum so agreed on is \$1,000 or more, it may be paid by the Treasurer out of the Consolidated Revenue Fund on the order of the Lieutenant Governor in Council approving such payment as is recommended by the Minister concerned."</p> <p>The amendment has been included in the package of amendments to the <u>Ombudsman Act</u>.</p>
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OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3)(d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
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MINISTRY OF GOVERNMENT SERVICES
(cont'd)

payment as is recommended by the Minister concerned."

12, p. 16 The Committee noted that the Attorney General has stated that recommendations for these amendments to the Act would be placed before Cabinet. The Committee expects to be dealing with them in the near future.

13, p. 8 The Committee recommended that the Attorney General table immediately in the Legislature a bill amending the Ombudsman Act.

15, p. 17 The Committee recommended "that the amendments to the the Ombudsman Act be tabled in the Legislature without delay; and that all parties cooperate in speeding the progress of the amending bill through the house."

16, p. 8 The Committee recommends that the Attorney General give priority to introducing and approving amendments to the Ombudsman Act in the current or next session of the Legislature.

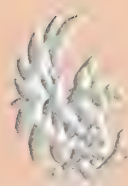
To date, no Bill has been tabled.

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3)(d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
<u>MINISTRY OF HEALTH</u>							
3	40	That: 3) <u>The Nursing Homes Act, 1972</u> , be amended in order that provision be made for the successful candidate for the construction of a new home to make application for a conditional licence immediately upon the making of the award to him. This licence should be conditional on compliance with the terms of the proposal and any subsequent stipulations imposed by the Ministry prior to the granting of an unconditional licence.	May 4, 1977	Agreed to implement recommendation.	5, p. 32	The Committee considered this complaint for the purpose of following up with the Ministry as to the implementation of the Ombudsman's recommendation as set out at pages 177 and 178 of the Ombudsman's Third Report.	
					11, p. 21	The Committee accepted the interim arrangement on the understanding that the Act will be amended at some time in the future.	
					12, p. 15	The Committee noted that it is still awaiting amendments to the legislation and will continue to monitor the Ministry's response to its recommendation.	
					13, p. 12	The Committee noted that the interim arrangement accepted by the Committee pending amendment of the <u>Nursing Home Act</u> continues to be followed by the Ministry and will be followed until the legislation is amended. The Committee expressed hope that the amendments will be brought forward soon.	The Ministry has advised that the necessary amendment has been enacted as S.O. 1987 c.20, s.4.

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OMBUDSMAN ONTARIO

ANNUAL REPORT 1989-90





Ombudsman Ontario

Roberta L. Jamieson
Ombudsman

125 Queen's Park
Toronto, Ontario
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(416) 586-3300

June 28, 1990

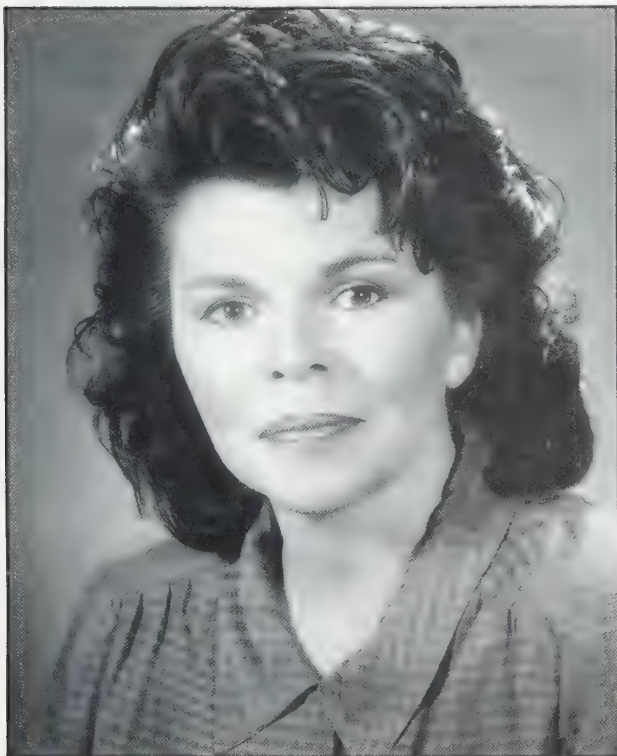
The Speaker
Legislative Assembly
Province of Ontario
Queen's Park
Toronto, Ontario

Dear Speaker:

I am pleased to submit, for presentation to the Legislative Assembly, the Annual Report of the Ombudsman for the period April 1, 1989 to March 31, 1990.

This report is provided pursuant to Section 12 of the *Ombudsman Act*.

Roberta L. Jamieson
Ombudsman



ROBERTA L. JAMIESON

OMBUDSMAN'S MESSAGE

A YEAR OF TRANSITION

At the end of the last fiscal year, my predecessor, Dr. Daniel G. Hill, retired, and Eleanor Meslin was appointed temporary Ombudsman. I am grateful to Dr. Hill for the foundation he built during his tenure. I also acknowledge Ms. Meslin's competent management in the interim before my appointment on October 30, 1989, and her assistance until her resignation in February, 1990. The work of these two persons resulted in my inheriting a competent and dedicated staff and an able administration in the service of the people of Ontario in achieving consistently fair treatment in the administration of the provincial government.

This, then, was a year of transition, from the third Ombudsman to a temporary Ombudsman and now, the reins have been handed to me. In this Annual Report, it is not appropriate for me to take credit for the first seven months, and for most of the balance of the year, I was settling in and beginning to shape my operations to suit the special approaches which I intend to apply in fulfilling my responsibilities.

This Report therefore consists of an objective presentation on the operations for the year for which, as I say, I can take little credit. In this message, however, I want to give an indication of some of the directions I intend to take in the year ahead. I look forward to filing an Annual Report next year, my first entire year as Ombudsman, which will report my progress in achieving the objectives which I am setting.

The Year Past

I appeared before the Standing Committee on Administration of Justice to discuss alternative dispute resolution, a field in which I have some expertise. I also appeared before the Standing Committee on the Ombudsman to set out the manner in which I had arrived at findings in regard to a case in which the Ministry involved did not implement my recommendations in a manner which I considered to be adequate and appropriate.

The Year Ahead

Each Ombudsman has certain perspectives, certain special skills, certain goals. In the year ahead, I intend to begin to implement changes which I believe will contribute to Ombudsmanship in Ontario. As times change, it is important that the Ombudsman provide a service which is relevant to the needs of all of the people of Ontario.

I intend to take steps which will bring the Ombudsman's services to the attention of more people in Ontario. I want to create greater public consciousness about how the Ombudsman can work with the people of the province to improve government administration. I will re-examine the function of the district offices in this respect to see how we can improve outreach and access without increasing costs or creating new complications in the Ombudsman's processes.

I intend to bring my skills to bear in alternative forms of dispute resolution which do not rely upon confrontation and power to seek out mutually-satisfactory resolution of difficult issues. In receiving, investigating and reporting on concerns raised with me my objective will be not only to help an aggrieved individual, but in the true spirit of win/win settlements, to secure improvement in the administration of government for all people of the province.

In that same spirit, I intend to engage in "preventative Ombudsmanship", that is, to advise government organizations who ask for my assistance as to the factors which they need to consider to bring their procedures and regulations to the standard of democratic administration that the people of Ontario expect. I and my staff will also offer senior officials seminars on the way in which the Ombudsman Act operates so that my mandate can be seen as a means of independent evaluation which protects the interests of public and public servant alike.

I intend to redouble efforts to see that those who ask for my assistance are received by knowledgeable, sensitive professional persons who serve as members of my staff. I want my staff to be representative of the people of Ontario, but in addition, I want all of my staff to be able to provide prompt, competent assistance to all segments of Ontario's population. I intend to deal directly with the various communities in Ontario and look forward to regular personal contact with them.

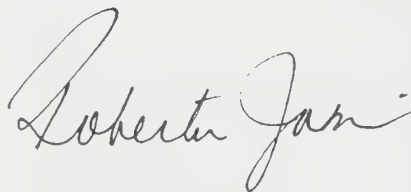
Another task I will be working on over the year ahead is reinforcing the fact that the Ombudsman is neutral and independent, rather than an impassioned advocate. I must listen to and consider all sides if the Ombudsman is to be seen

as an objective means of improving the level of fairness in government administration. In this respect, public servants and members of public boards and tribunals will have firm reason to consider the Ombudsman as a sign of good government, as an instrument to achieve consistent and equal treatment, as a means of independent examination of the operation of a law against the background of actual cases — not as an indication that something is wrong.

I also intend to look at systemic issues and trends, not just individual complaints, and to share my findings as appropriate with government organizations, the Assembly, and the people of Ontario.

As an Officer of the Legislative Assembly, as its trustee in representing the interests of the people of the province as a last resort in resolving their concerns about government administration, I look forward to meeting with Members of the Assembly to discuss my services in assisting them to deal with issues raised by their constituents.

It is my honour, challenge and obligation to move the institution of Ombudsman forward as Ontario moves toward the 21st Century, and I am looking forward to next year's Annual Report in which I will share my views on the course I have taken and the course which will then lie ahead.



Roberta L. Jamieson

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INTRODUCTION

This Annual Report covers the fiscal year from April 1, 1989 to March 31, 1990. The Report has been divided into three parts.

Part I provides an overview of the operation of the Ombudsman's office in the last fiscal year, Part II includes a selection of case summaries which illustrate the varied complaints that come before the Ombudsman. The Appendices contain statistical and other information.

PART ONE

PART ONE

FISCAL YEAR 1989-90

In 1989-90 the number of requests for assistance of the Ombudsman was 30,176.

REGIONAL SERVICES

Emphasis was placed in this fiscal year on improving service delivery mechanisms.

A reorganized management structure provided direction and advice to staff in all areas of service delivery. As a result, greater consistency has been achieved in handling requests for assistance, public education and administration across the nine District Offices.

In conformity with the siting model developed over the past two years, the Ottawa office was relocated to a smaller and more cost-effective site while the Windsor office was moved to a more central and independent site. An office in North Bay was reopened. Negotiations have begun for a more visible and accessible office site in Kenora.

FRENCH LANGUAGE SERVICES

With the coming into force of the *French Language Services Act, 1986*, the Ombudsman undertook important initiatives to improve delivery of services to francophones.

A French Language Services Officer position has been created. The Officer provides advice and assistance to senior staff regarding the provision of services to francophone clients. The French Language Services Officer is also responsible for providing outreach services to Ontario's francophone community so as to promote a better understanding and encourage utilization of the Ombudsman's services.

PUBLIC EDUCATION

To make the services of the Ombudsman better known, various strategies to reach a broader base of the Ontario public were employed. These involved province-wide distribution of print materials including the Annual Report, pamphlets, brochures, newsletters, posters and fact sheets in 14 languages. Audio tapes and Braille transcriptions explaining the Ombudsman's services were made available.

Radio public service announcements were produced and distributed to media outlets. Presentations were made to a number of community organizations. Display units and audio visual presentations were circulated throughout the province.

WORTHY OF SPECIAL MENTION

In July 1988 the Ombudsman made a Special Report to the Legislature concerning eligibility for survivor benefits to a person who married her spouse after he had retired. That case involved the Teachers' Superannuation Fund and (as noted in the Recommendation Denied Tables, page 24) recommendations of both the Ombudsman and the Standing Committee resulted in legislative changes as well as retroactive payments and pension entitlement to the complainant. During the course of this investigation, the Ombudsman received an almost identical complaint from a widow whose husband was an Ontario Hydro pensioner.

The Ombudsman made similar recommendations to Ontario Hydro: that it reconsider its pension provisions to include benefits for surviving spouses regardless of the timing of the marriage, and that it grant a pension to this complainant effective from her husband's date of death. Since Ontario Hydro's pension benefits are negotiated with its union, it agreed to place the issue before the union's representatives for discussion in the context of the next collective agreement. This item was subsequently ratified by union and management and benefits are now available for surviving spouses who married a pensioner after retirement. Ontario Hydro also agreed to bring this additional benefit to the attention of its employees and retirees through its company publications. Additionally, Ontario Hydro has agreed to make pension benefits available to this complainant.

SPECIAL REPORTS TO THE LEGISLATURE

A Special Report on Farm Q was presented to the Legislature in 1989, but the matter continued to be unresolved. In February, 1990, the Ombudsman thoroughly reviewed the matter, and reported to the Legislature on her findings and recommendations. At the end of the fiscal year, the Standing Committee had not yet reported to the Legislature on the matter.*

In September, 1989, the Ombudsman made a Special Report to the Legislature regarding the complaint of Ms. W against the Ministry of Health. Ms. W had contended that the Ontario Health Insurance Plan's refusal to reimburse her for the cost of renting an electric breast pump to feed her infant son who was born prematurely, was unreasonable.

Following consideration of the Ombudsman's Report, the Standing Committee recommended that the Legislature support the Ombudsman's recommendation that the Ministry include as an insured service, the cost of electric breast pumps for feeding premature infants. The Committee also recommended that the Legislature support the Ombudsman's recommendation that the Ministry develop clear criteria for managing the Assistive Devices Program, and added its own recommendation that the Ministry re-evaluate the process through which it determines what programs, devices and benefits are funded by the Ministry.

Subsequently, the Ministry undertook a complete review of the Assistive Devices Program. The review has been completed, and a Report is expected to be made public in the near future.

OMBUDSMAN MANDATE CLARIFIED

The Annual Report for 1988-89, reported two jurisdictional challenges which had proceeded to the stage of litigation. The litigation has now been completed, with the following results:

1. THE BOARD OF RADIOLOGICAL TECHNICIANS

The Board took the position that the Ombudsman had no authority to investigate it, because of its status as an independent body supervising a self-regulating profession. The Divisional Court heard the matter in January, 1990, and upheld the Ombudsman's authority to investigate complaints against this Board.

2. THE MINISTRY OF FINANCIAL INSTITUTIONS, ET AL

The Attorney General, on behalf of the Ministry of Financial Institutions, and on behalf of the Ministry of Health and the Ministry of Agriculture and Food, took the position that the Ombudsman had no authority to investigate the actions of public servants carrying out their duties under the authority of an Order-in-Council. The Divisional Court heard the matter in December 1989 and upheld the Ombudsman's right to investigate complaints under such circumstances.

* On April 19, 1990, the Standing Committee presented a Special Report on Farm Q to the Legislature.

PART TWO

PART TWO

This part consists of a selection of case summaries which illustrate the varied issues that come before the Ombudsman.

CASE NO. 1

The Ombudsman's involvement can bring a matter to an appropriate level to facilitate effective resolution of a dispute.

A worker was injured at work and suffered multiple severe injuries which resulted in permanent disability. Over time he developed degenerative arthritis where he had been injured, further disabling him.

Although two specialists described the worker as totally disabled by his injuries, the Workers' Compensation Board assessed his disability at 60%. After investigating the matter, the Ombudsman recommended that the man's pension be increased to 100%.

The Board believed that its position was correct but, in an attempt to resolve the difference of opinion, agreed to reassess the worker's level of disability. Reassessment, however, was delayed when he suffered further injury after falling when his previously injured leg gave way. Following recovery, his level of disability was assessed by the Board at 85%.

The Ombudsman, noting the man's severe injuries and questioning the likelihood of employment, met with the Chairman of the Board in an attempt to resolve the problem. The Board agreed to review the matter and subsequently decided to increase the worker's pension to 100% in light of the significance and multiplicity of his compensable injuries. The increase was retroactive to the time of his fall.

CASE NO. 2

The Ombudsman's involvement can be an effective alternative to costly litigation of disputes involving claims for compensation.

A person sustained a motor vehicle accident when gravel and water collected on the paved road surface which she regularly travelled to work. In her view, the accident resulted because

her car had skidded on gravel which had been deposited on the paved road by the Ministry of Transportation's grader and the Ministry should be held responsible for damages.

The Ministry took the position that it had not been negligent and therefore was not responsible for the accident victim's damages.

After investigation, the Ombudsman concluded that there was enough evidence to support the person's contention. The Ombudsman recommended that she be reimbursed for the replacement value of her 1974 car as well as for out-of-pocket expenses, including dental work and transportation costs, which resulted when she could not drive a vehicle because of anxiety related to the accident.

The Ministry accepted the Ombudsman's recommendation and issued a cheque in the amount of \$2,880 as settlement of the claim.

CASE NO. 3

The Ombudsman's involvement may sometimes result in a Ministry changing the way in which it interprets and administers legislation.

A cattle farmer made a claim for compensation under the *Dog Licencing and Livestock Protection Act* when his herd of cattle was disturbed during the night by dogs or wolves. The cattle broke through a fence and dispersed into a swamp, with the loss of at least one head by drowning.

The Ministry of Agriculture and Food investigated the matter and a provincial valuator recommended that there should be no compensation awarded because he had not found proof that the loss was due to predator attack.

However, the Ombudsman found that under the Act, compensation should be paid unless the valuator found evidence that the loss was not due to predator attack. Since the valuator found no evidence disproving predator attack, the claim should have been paid.

The Ministry reviewed its interpretation of the legislation and agreed to pay the claim.

CASE NO. 4

The Ombudsman's involvement can result in finding new options which form the basis for a negotiated settlement of the dispute.

The owner of a lakefront cabin approached the Ombudsman with his concerns about the Ministry of Natural Resources which had sold two undeveloped Crown lots to the west of him to the adjacent tourist outfitting camp situated immediately east of his property. He was concerned that his secluded cabin would be disturbed by the camp. He objected to the Ministry's willingness to sell the Crown lots to a commercial operator, but not to him. He bought his cabin when it became apparent that the Crown lots in question could not be purchased according to the policy which existed at that time.

The Ombudsman suggested a number of alternatives that eventually led to a three-way property exchange. The cabin owner gave up his property to the Crown and received another lakefront Crown lot in return. The cabin owner's former lot was then sold by the Crown to the tourist camp owner who was also pleased with the outcome. The Ministry received payment for the Crown lot which it had provided to the cabin owner.

CASE NO. 5

The Ombudsman's involvement can assist a person in finding an appropriate source of help.

The Ombudsman was asked for assistance in a matter involving the Office of the Registrar General.

Under the *Change of Name Act, 1986*, a person who has reason to believe that a change of name was obtained by fraud may apply to the court for an order revoking the change of name. In this matter, a man alleged that his former wife had successfully applied to change their child's last name, based on fraudulent information. The man requested that the Office of the Registrar General bring a court application to revoke the change of name.

While the Office of the Registrar General was not opposed to having the matter brought before the court, it did not feel that it should be the party initiating the application.

As the person requesting assistance lacked the financial resources to bring the court application himself, the Ombudsman suggested that he contact legal aid. With this help he brought the application and succeeded in revoking his child's change of name.

CASE NO. 6

The Ombudsman's involvement can improve the quality of administration even though the Ombudsman may not support an individual's claim.

An engineer had applied for a professional position in the Ministry of Transport. He had been interviewed and ranked third in a job competition, but was not offered one of the available positions. A second job competition was subsequently combined with the first. Although he applied again, he was not given an interview in the second competition. He contended that the process had been unfair and that he should have been considered by the Ministry for the second job.

The Ombudsman's investigation revealed a number of irregularities, omissions and unfairnesses in the Ministry's competition process. The Ombudsman recommended a number of procedural improvements. These included: the combining of competitions should be done only when procedural fairness could be ensured; proper evaluation of position requirements prior to the interview stage should be done so that the selection criteria would be weighted to correctly reflect their importance to the job; the subjective opinions of panel members should not be used to exclude candidates from the process or be passed on to anyone else as this might prejudice the candidate's future chances for fair assessment; complete documentation of selection criteria and the application screening process should be kept on file; and, members of selection panels should receive training in staffing policy and procedure. The Ombudsman did not, however, support his claim that he should have been hired into one of the available positions.

The Ministry conducted its own internal investigation and agreed with the Ombudsman's finding that procedural flaws had occurred in the competitions. The Ministry agreed to be more vigilant in the future in ensuring that its staffing and hiring practices afford all applicants an equitable opportunity to compete.

CASE NO. 7

The Ombudsman's investigations may support the actions of government officials.

Through his discount stockbroker, an investor bought 4,300 preferred shares on a day they were traded without the dividend privilege. He alleged that his broker had benefitted from the last declared dividend.

The investor came to the Ombudsman with the concern that the Ontario Securities Commission had endorsed the Toronto Stock Exchange's decision on his complaint without investigating its merits.

Upon investigation, the Ombudsman was satisfied that the Commission had conducted an independent review of the facts and the Exchange's findings, that a discount broker executes trade orders on behalf of the client, but, unlike a full-service broker, does not advise on market conditions, were reasonable.

The complaint was not supported by the Ombudsman.

CASE NO. 8

The Ombudsman's involvement can result in reconsideration of a decision by a governmental organization.

A worker injured his back at work in 1979 and this caused low back and leg problems. At the same time the worker had a non-compensable medical condition in the same areas.

Two orthopaedic specialists found him to be disabled by his compensable injuries. Two neurologists noted both the worker's compensable and non-compensable condition. One suggested that the compensable condition was complicated by the non-compensable condition, but neither stated that the non-compensable condition was more significant.

The Tribunal had interpreted the opinions of the two neurologists as indicating that the worker's injury no longer made a significant contribution to his disability and ruled that he was not entitled to further benefits. The Ombudsman concluded, however, that the Tribunal had misread the evidence of the neurologists and, furthermore, had not taken into

account the evidence of the orthopaedic specialists.

The Ombudsman found that the criteria the Tribunal used to reconsider a case were met in that the circumstances were exceptional and that there were sufficiently compelling grounds to lead an objective observer familiar with the case to recognize that reconsideration was likely to lead to a different result. The Ombudsman recommended that the Tribunal appoint a panel to reconsider its decision.

The Tribunal agreed to send the documentation to a panel to determine whether reconsideration was advisable. This Panel decided that reconsideration should be granted.

CASE NO. 9

The Ombudsman's involvement can result in a governmental organization making necessary policy changes.

An inmate complained to the Ombudsman that he was removed from his cell without being given an opportunity to collect his belongings prior to being transferred to another institution. His personal property was subsequently lost, stolen or misplaced.

The institution agreed with the Ombudsman's finding that staff should have secured the property when the inmate was unable to do so. The inmate was reimbursed for the loss of his property and the Ministry instituted a policy whereby Ministry staff are now responsible for securing property left in a cell or on a unit when the inmate is prevented from doing so.

CASE NO. 10 and 11

The Ombudsman's involvement can encourage a governmental organization to improve communications with the public. Two cases are illustrative.

A person contacted the Ombudsman after his wages were garnished by the Support and Custody Enforcement Office without a warning. The Ombudsman recommended that a warning letter be sent for each unrelated incident of default and the Support and Custody Enforcement Office agreed.

In another case, a support recipient brought to the Ombudsman a number of complaints focussed on non-enforcement of her support order. She was under the impression that the Support and Custody Enforcement Office had negotiated a payment schedule with the debtor contrary to the *Support and Custody Order Enforcement Act*. During the course of the Ombudsman's investigation these allegations were not supported; however, the Ombudsman recommended that communications of the Support and Custody Enforcement Office with program participants be improved. The Support and Custody Enforcement Office undertook a number of initiatives to improve communication including the provision of new brochures, acknowledgement letters and form letters that would improve its communications with program participants.

CASE NO. 12

The Ombudsman brought together representatives of the provincial and federal governments to resolve problems experienced by a large group of people.

102 Ontario flue-cured tobacco producers who left the declining tobacco growing industry in 1987 discovered that they had received far less financial assistance under the federal/provincial cost-sharing Tobacco Assistance Program than farmers who left the industry in 1988. The terms of the Program, designed to encourage farmers to discontinue tobacco production, were changed in 1988. Those who left in 1987 felt this was unfair. They formed a Committee and when their requests for equal compensation were refused, they turned to the Ombudsman for help.

The Ombudsman agreed to investigate. Subsequently, Ministry of Agriculture and Food representatives worked with officials from the federal government and the Ontario Flue-Cured Tobacco Growers Marketing Board to renegotiate 1987 exit payments. Negotiations were successful and the farmers have now received retroactive compensation.

CASE NO. 13

When the Ombudsman's investigation revealed inconsistent practices by a Ministry, the Ombudsman made recommendations which the Ministry accepted.

A married couple applied to the Ministry of Natural Resources for permission to grant hunting and fishing licences. They had bought a trailer park which was a very popular fishing resort. Fishing licences had been sold at the trailer park resort for the previous 14 years.

MNR denied their application on the grounds that there were poor sales by previous owners, the area was already well served with licence outlets and the location of the couple's business was not readily accessible to the public.

The Ombudsman's investigation confirmed that the previous owner had been issued a licence and there had been no substantial changes in circumstances when the resort changed hands.

The Ombudsman thought that the Ministry may not have acted consistently and recommended that the couple be granted licence issuing authority. The Ministry agreed to do so.

CASE NO. 14 and 15

In two cases the Ombudsman made a Ministry aware that its policy on a particular issue was inconsistent with that of other ministries dealing with the same issue.

A provincial employee elected to terminate employment under the "Voluntary Exit Opportunity Plan" and informed the Ministry of Consumer and Commercial Relations of his intention well in advance. His service ended on October 31, 1988, and he received a lump sum severance payment he was due on December 20, 1988. His request for payment of interest for the October 31 - December 20 period was refused by the Ministry.

The Ombudsman informed the Ministry of Consumer and Commercial Relations that the policy of other ministries is to pay interest when the lump sum payment was unduly delayed.

The Ministry agreed to pay the former employee interest for the period December 1 - December 20, 1988.

An employee provided his Ministry with three months' notice of his intent to retire. Following his date of retirement, several delays in payments occurred which he felt were unwarranted. Since advance notice of his retirement had been provided, he felt the delays in payment were unreasonable and accordingly requested that interest be paid. On reviewing his request, both his former Ministry and the Ministry of Government Services, who were responsible for his monthly superannuation payment, stated that interest would not be added to the monies paid.

During the Ombudsman's investigation the procedures normally followed by both Ministries when processing similar awards were reviewed with senior government officials. When taking into account the business days, rather than calendar days, and the time taken by Canada Post, it was determined that the delays involved were minor.

At the time of this person's retirement, the Ministry used an artificial target of 90 days to complete the necessary procedures; however, at the time of the investigation the Ministry was attempting to adopt a 30-day turnaround time. There was no Ministry policy on the period for processing employee payments or when interest should be paid.

Given the Ministry's adoption of a 30-day processing time, the Ombudsman asked that the circumstances of the case be reviewed. Following the Ministry's review, the Ombudsman was advised that the former employee had been paid 12% interest on the delay over 30 days.

CASE NO. 16

The Ombudsman assisted a government employee to obtain compensation for a lost promotional opportunity when the Ministry misplaced his application and failed to remedy the situation.

A Ministry of Housing employee hand-delivered his application for a promotional vacancy to the Ministry's Human Resources Branch on what he had been told was the last day applications would be accepted. He subsequently received a standard acknowledgement letter advising him that his qualifications would be reviewed against the requirements of the position. Two weeks later, he learned that interviews had been held. Surprised that he had not been

interviewed, he contacted the manager in charge of the position and learned that the manager had never seen his application.

The employee's application was eventually located. By this time, however, the position had been offered to another candidate, and the Ministry did not wish to reopen the competition. The Ministry apologized, but the employee was not satisfied this was an adequate response.

Although the Ministry agreed to take steps to improve its procedure, the Ombudsman was of the view that the Ministry's decision not to reopen the competition and to consider the employee's application was wrong and recommended that the employee receive appropriate payment to compensate him for his lost promotional opportunity. The Ministry agreed and the case was resolved.

CASE NO. 17

The Ombudsman assisted in obtaining a disability pension for a retired public servant who had been unable to receive any form of pension benefits.

A former government employee asked the Ombudsman for assistance regarding the difficulties she encountered with her pension.

Although she had worked for the provincial government with breaks for more than 25 years, she fell short of the requisite ten-year vesting period which would have established her pension entitlement. She was of the view that given her exceptional circumstances, the Public Service Superannuation Board was unreasonable in denying her a pension.

She began her employment with the government in 1956 but was unable to contribute to the Public Service Superannuation Fund, as she was considered to be a casual employee. She became a permanent employee in 1963 and began paying into the pension plan at that time. In 1972, due to extenuating circumstances, she resigned her employment with the government two days short of her ten-year vesting period. She received a refund of her contributions from the Public Service Superannuation Fund.

The Ombudsman was of the view that since the retired employee had obtained a refund of her contributions in 1972, she was unfortunately not entitled to receive a pension. It was determined however that since she was in ill health and unable to work, she was eligible for a disability pension from the Public Service Superannuation Board for her service in the Legislative Assembly. Further enquiries by the Ombudsman ensured that she received this pension.

CASE NO. 18

The Ombudsman assisted a professional truck driver in obtaining compensation for lost wages caused by delays in the provincial licensing procedure.

A truck driver contended that he should be compensated by the Ministry of Transportation for the lost wages he incurred as a result of the Ministry's unreasonable delay in processing his application for a truck driver's licence renewal.

The driver had complied with all the requirements and had submitted all the necessary medical and vision reports within an appropriate time. Yet he did not receive a permanent AC Driver's Licence for eight months. During the eight month delay, he was forced to renew his temporary licence three times. Each time this meant lost work and wages.

The Ombudsman contacted the Ministry and outlined the driver's concerns. After reviewing the matter, the Ministry concluded that it had erred in not processing the application in a timely fashion. As a result, it sent a cheque for \$135.81 representing lost wages to the truck driver. The Deputy Minister also apologized for the inconvenience that the matter had caused.

CASE NO. 19

The Ombudsman's involvement resulted in the amendment of an inmate's file, resulting in a new parole hearing.

An inmate of a correctional institution complained to the Ombudsman he was not granted parole by the Ontario Parole Board because of a serious error in his classification report.

The Ombudsman's investigation, which included a review of the classification report and interviews with Ministry personnel, determined that there was no basis for including certain information in the classification report.

As a result, the Ministry deleted these comments from the classification report and forwarded a letter of explanation to the Ontario Parole Board. Based on this new information, the Parole Board granted the inmate a new hearing.

CASE NO. 20

The Ombudsman's involvement in a student's concern over delay and discourtesy improved procedures for processing student loans.

An applicant for an Ontario Student Loan complained to the Ombudsman that she experienced substantial delays before receiving her loan, and that her telephone inquiries were not handled with dispatch or courtesy by the Ministry of Colleges and Universities. She wanted the Ministry to review its procedures and methods of communication at school Financial Aid Offices so a recurrence of a similar situation could be prevented.

The Ministry responded to the Ombudsman's notice of intention to investigate the matter by conducting a review of the applicant's concerns. The Ministry's review substantiated many of the facts in the complaint.

The Ministry apologized to the applicant for the poor service she received. The Ministry also reported it had developed internal monitoring procedures to ensure that student awards were issued promptly.

CASE NO. 21

The Ombudsman's involvement resulted in a Ministry apologizing for its treatment of a former patient.

A patient was admitted to a provincial psychiatric hospital where he was administered medication by injection because of his disturbed state. The next day, the physician ordered four doses of oral medication per day and, if the patient refused the medication, the medication was to be given by injection. The following day, the patient refused his pills twice and, against his wishes, received intramuscular injections.

Unable over several years to obtain redress for the wrong he believed was done to him, this man asked the Ombudsman to become involved in resolving his concern.

The Ombudsman's investigation revealed that two sections of the *Mental Health Act* provide that psychiatric treatment, including administration of medication, is not to be given without the consent of the patient, and that involuntary administration of medication as chemical restraint is allowed where necessitated by the patient's physical and mental condition.

The Ombudsman's review of the hospital records failed to reveal any indication that the patient's physical and mental condition when he refused the pills on his third day in hospital was such that he required restraint. The Ombudsman concluded that actions of the hospital staff in prescribing and administering medication as restraint when the complainant withheld his consent for medication as treatment were contrary to the provisions of the Act.

Because of the time that had elapsed since the original incident, the Ombudsman was of the opinion that the only suitable recommendation was that an apology be extended to the former patient. The Ministry of Health apologized for any distress that the inappropriate administration of psychiatric treatment might have caused the man.

CASE NO. 22

The Ombudsman's involvement resulted in the change of a governmental form which had unfairly categorized the developmentally disabled.

A person with a developmental disability complained to the Ombudsman that it was unfair and unreasonable for the Ministry of Transportation to include the term "mental retardation" in the "Psychiatric Disorders" category of its Driver's Medical Examination Report form.

The Ombudsman obtained a medical opinion from an independent psychiatrist known for his work with the developmentally disabled, which was forwarded to the Ministry with the Ombudsman's recommendation that it consider removing the term "mental retardation" from the Psychiatric Disorders category.

The Ministry agreed, and the new form in use places "mental retardation" in the neurological category.

CASE NO. 23

The Ombudsman's involvement resulted in a correctional institution reinforcing its policies to provide for the safety of inmates.

An inmate complained to the Ombudsman that because a door to the living unit was left ajar by staff, he had been assaulted by another inmate.

The Ombudsman's investigation supported the inmate's concern.

As a result, the Superintendent issued a memorandum to all staff reminding them of the importance of following security procedures to ensure the safety of all inmates.

CASE NO. 24

The Ombudsman's independent investigation can disclose information which will enable a Ministry to change its decision.

Residents of a Northern Ontario community sustained substantial damage to their homes when sewage backed up in a sewage collection system operated by the Ministry of the Environment.

Their damage claims were submitted to the Ministry which, after conducting an internal investigation, submitted the claims to its insurers. The insurers denied the claims on the basis that there was no evidence of negligence on the part of the Ministry. The insurer felt that the damage was the result of flooding resulting from severe weather conditions, a factor not covered by the insurance.

The Ombudsman's investigation included a detailed review of the circumstances on the day of the flooding incident and a review of the operation of the sewage collection system. The Ombudsman identified several factors on which a conclusion could be based that the decision to deny compensation to the complainants was unreasonable even if the Ministry was not negligent in its operation of the system. There was evidence, for example, that the system may have failed due to a fault in the design, or the failure to set controls properly.

The Ministry reviewed the matter further with its insurers, who continued to deny the claim. The Ministry stated to the Ombudsman that it had no alternative but to abide by the insurer's decision. After further investigation and legal research disclosing a recently reported court case, the Ombudsman gave further reasons for compensating the residents. After discussion with the Ministry the insurer decided to pay these claims.

CASE NO. 25

The Ombudsman's involvement resulted in reconsideration of a decision by a governmental organization because all evidence had not been taken into account.

A welfare recipient filed an application for an allowance under the *Family Benefits Act* as a permanently unemployable person. His application included a history of his medical problems. He contended that, in denying his application, the Ministry of Community and Social Services ignored some of his medical evidence.

After an investigation the Ombudsman determined that the Medical Advisory Board made its report to the Director of Income Maintenance without considering all available evidence. In addition, the Ombudsman recommended improvements in the training and guidance provided to medical adjudicators.

The Ombudsman also determined that the Director of Income Maintenance had failed to provide all relevant medical information about the applicant in his submission to the Social Assistance Review Board.

The Ministry agreed to implement the recommendations of the Ombudsman, and granted the applicant a retroactive benefit based on his original application.

CASE NO. 26

The Ombudsman may use the power of examination under oath when it is necessary to determine the credibility of witnesses.

A person complained to the Ombudsman that the actions of a collections officer with the Ministry of Government Services had been inappropriate, unprofessional and intimidating during his attempts to recover a loan. Because of fundamental disagreements in the versions of events narrated by the complainant and the collector, they both were examined under oath, a procedure set out in S.20 of the *Ombudsman Act*.

The investigation established that the Ministry had contravened the *Collection Agencies Act* by failing to write the debtor at her current address before telephoning her.

As well, during the course of a telephone call, the Ministry employee asked rhetorically where the debtor lived. When she refused to tell him he recited her address to her, leaving her apprehensive.

The Ombudsman found that the collections officer disclosed the debtor's financial situation to another person who answered the debtor's phone.

The Ministry agreed with the Ombudsman's recommendations: the employee apologized in writing to the debtor; the Ministry began to provide enhanced staff training in the areas of privacy, access to information and other legislation; and the Ministry commenced a series of customer service workshops to increase staff awareness of the need for tact and understanding in communicating with members of the public.

CASE NO. 27

If the Ombudsman finds a pattern to complaints regarding a particular governmental organization, a systemic investigation can be conducted.

The Ontario Worker Adviser (OWA) represents injured workers in their appeals of decisions made by the Workers' Compensation Board (WCB). In two cases in which the Ombudsman's services were sought, both workers had completed the appeal system of the WCB and wished to proceed to the Workers' Compensation Appeals Tribunal.

However, one OWA office involved was experiencing a delay of 26 months from the time the worker came to the OWA until an adviser could be available. The length of delay at the other regional OWA office was 14 months. The Ombudsman's investigation of the OWA complaints found the average delay of the 12 offices throughout Ontario was approximately 18 months. The OWA management explored that the caseload was overwhelming, and cases continue to come in at a rate in excess of government projections.

As a result of the Ombudsman's involvement, the Ministry of Labour conducted a review of the OWA and a number of recommendations were made to improve the operation. The implementation of these recommendations is ongoing and the Ombudsman is continuing to monitor the progress made.

CASE NO. 28

When circumstances warrant, the Ombudsman can take immediate action to resolve an emergency situation.

Thirteen families living on a mine company property in Northern Ontario were concerned that Ontario Hydro would cut power to the mine's electrical pump which supplied them with water, within 24 hours, because the company had not paid its electricity bill. Their own rents and hydro bills were paid. The absentee mine owners could not be contacted. The temperature locally was -35° when representatives of the residents contacted the Ombudsman. They feared not only the misery of no water over the Christmas season, but also the danger of considerable damage to water pipes and equipment. The Ombudsman arranged for Ontario Hydro officials to contact family representatives for assistance in discovering which lines fueled the families' water pumps. Ontario Hydro agreed that none of the services would be cut off.

CASE NO. 29, 30 and 31

The Ombudsman's investigation resulted in the Ministry of Community & Social Services carefully reviewing individual concerns in three Family Benefits cases.

A former recipient of Family Benefits contended that the Social Assistance Review Board's decision to deny him interim financial assistance was unreasonable.

In response to the Ombudsman's notification that this concern would be investigated, the Board advised it would review the application for interim assistance. Shortly thereafter, the Board notified the Ombudsman that the initial denial had been based on unsubstantiated financial information which it incorrectly understood had been substantiated. The Board reversed its decision and ordered that interim assistance be paid from the date of cancellation of benefits to the date of the pending appeal decision.

A former Family Benefits Assistance recipient sought the Ombudsman's assistance in dealing with the Central Collection Service of the Ministry of Government Services, which was attempting to collect an overpayment of Family

Benefits made to her by the Ministry of Community and Social Services some years before. Apparently, she had left a friend in charge of clearing up the debt when she left the country to obtain employment. However, while she was away, the Ministry of Community and Social Services discovered an additional overpayment and sent the notices regarding it to an old address. As a result, when she returned to Canada, she was suddenly faced with collection notices. She was not sure whether she actually owed any monies. Despite her action of sending in a \$500 payment to the Central Collection Service, the government organization continued to send formal collection notices in apparent disregard of the explanations and questions in her letters.

The Ombudsman arranged for her to meet with a Family Benefits recovery project official. As a result, the Ministry of Community and Social Services agreed to arrange more suitable repayment terms and waive further interest being charged on the account. In addition, the entire \$500 payment already made by the complainant in the interim was credited towards the principal.

A Family Benefits recipient was informally advised by a case worker that an overpayment had been assessed against her. She received formal statements from the Ministry alleging overpayments of almost \$2,000, which she contended were unreasonable.

After the Ministry received the Ombudsman's notice of intent to investigate, the Ministry advised the client that a review of her file had been completed and an additional overpayment of more than \$2,000 established.

A careful investigation of the file revealed problems with the timely processing of information within Ministry systems, and revealed that the client had acted in good faith with the Ministry throughout her history as a recipient.

During the Ombudsman's investigation, the Ministry withdrew part of the overpayment allegation and ultimately it waived the entire sum.

CASE NO. 32

The Ombudsman's involvement in the case of a patient in the maximum security unit of a provincial psychiatric hospital helped provide the patient with a fresh start.

One of the Patient Advocates contacted the Ombudsman with the concern that the patient's continued detention in such a setting was unwarranted. From the age of six this patient had spent most of his life in psychiatric hospitals, being variously diagnosed and described as requiring a secure and structured environment.

Ten months after the Ombudsman's letter of intent to investigate, the patient was accepted for transfer to a less secure setting in another hospital, provided he undergo a transitional stay in a different unit. The patient was reluctant. He saw himself as a higher functioning individual than most of the other residents of this unit. The transfer, which was attempted with little notice or preparation, was a disaster. Upon arrival other patients converged on him and his escort, so upsetting him that he refused to move from between the glass doors of the entrance. Within a couple of hours he was back at the maximum security unit.

The Ombudsman made several conclusions and recommendations respecting transfer procedures to avoid such a situation recurring.

Five months later the patient was transferred to yet another psychiatric hospital. After six weeks it was determined that insufficient grounds existed to renew his involuntary status, and the patient discharged himself.

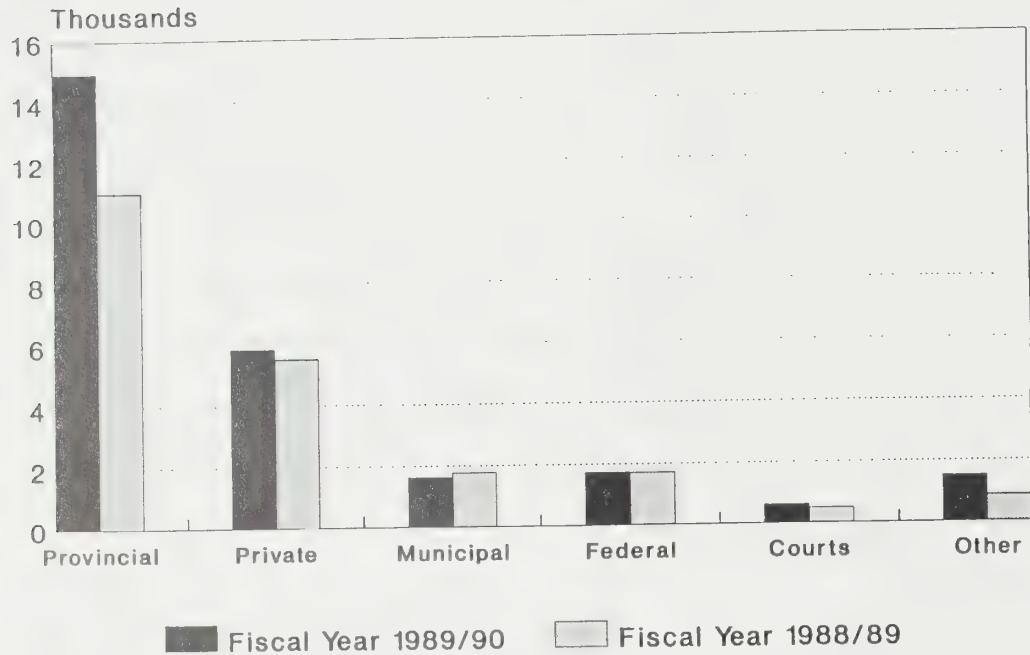
This man, now 31 years old, has been functioning in the community for two years.

Because the hospital had accepted our recommendations concerning transfer procedures and movement into the community, the file was closed.

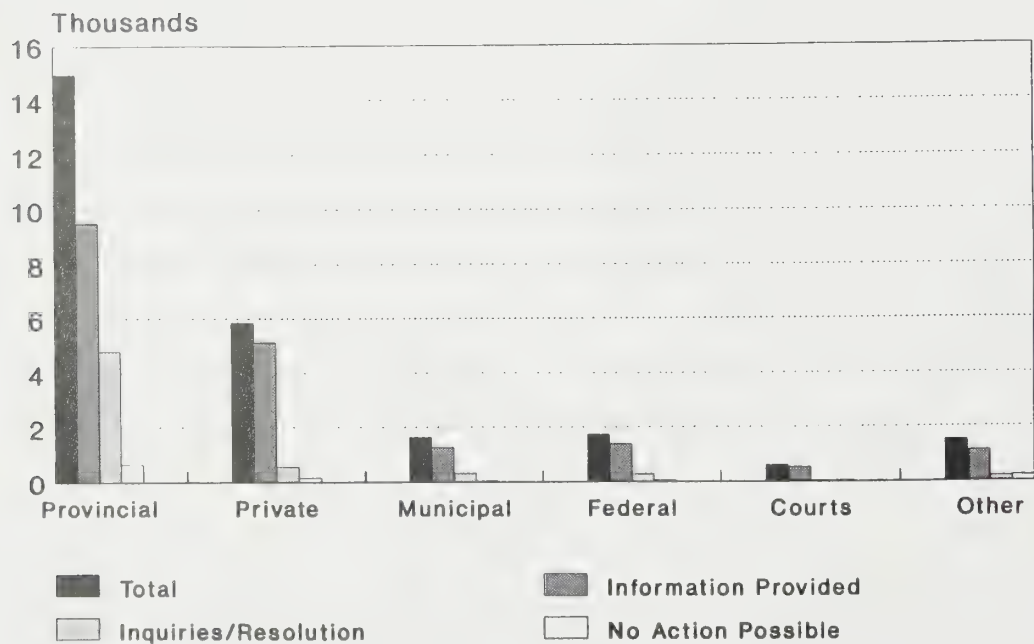
APPENDICES

STATISTICAL INFORMATION

Non-Jurisdictional Complaints/Inquiries Fiscal Year Comparison

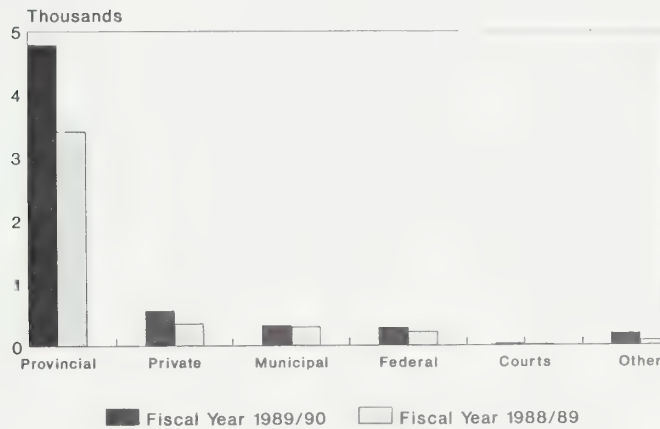


Non-Jurisdictional Complaints/Inquiries Fiscal Year 1989/90 Distribution

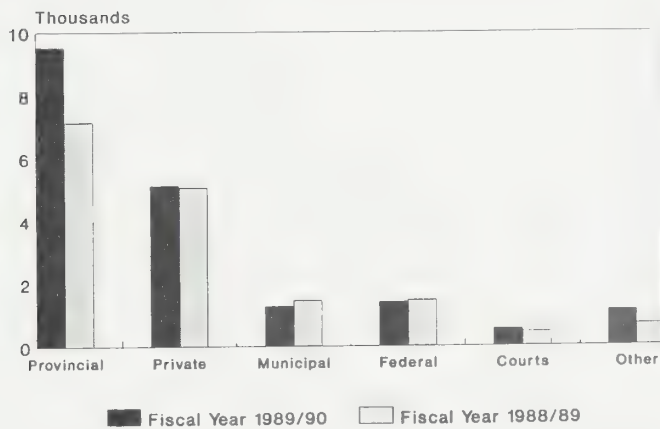


STATISTICAL INFORMATION

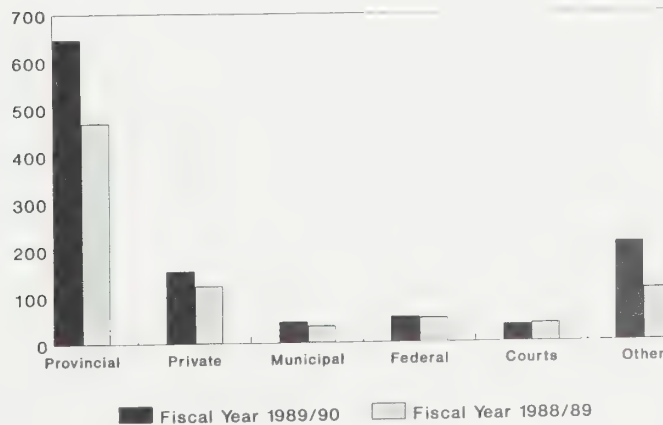
Inquiries Made / Resolution Facilitated Non-Jurisdictional Complaints/Inquiries



Information Provided Non-Jurisdictional Complaints/Inquiries



No Action Possible Non-Jurisdictional Complaints/Inquiries



STATISTICAL INFORMATION

DISPOSITION OF JURISDICTIONAL COMPLAINTS FOR FISCAL YEAR

ORGANIZATION COMPLAINED AGAINST	COMPLAINT SUPPORTED						COMPLAINANT ASSISTED		INDEPEN- DENTLY RESOLVED		UNSUB- STANTIATE	
	NO RECOM- MENDATION		FORMAL RECOMMENDATION ACCEPTED		FORMAL RECOMMENDATION DENIED							
	1989/90	1988/89	1989/90	1988/89	1989/90	1988/89	1989/90	1988/89	1989/90	1988/89	1989/90	1988/89
AGRICULTURE & FOOD	0	0	0	0	0	1	2	1	0	0	0	4
ATTORNEY GENERAL	1	0	4	0	0	0	21	17	0	3	18	6
Ontario Municipal Board	0	0	1	2	0	0	0	0	0	0	4	9
Public Trustee	0	0	0	0	0	0	11	14	2	0	3	2
TOTAL ATTORNEY GENERAL	1	0	5	2	0	0	32	31	2	3	25	17
CITIZENSHIP	0	0	0	0	0	0	0	0	0	0	3	0
Human Rights Commission	0	0	0	0	0	0	9	7	1	0	10	22
TOTAL CITIZENSHIP	0	0	0	0	0	0	9	7	1	0	13	2
COLLEGES & UNIVERSITIES	0	0	1	0	0	0	11	5	0	0	2	6
COMMUNITY & SOCIAL SERVICES	0	0	1	1	0	0	22	22	1	7	20	14
Social Assistance Review Board	0	0	0	0	0	0	7	22	0	1	3	7
TOTAL COMMUNITY & SOCIAL SERVICES	0	0	1	1	0	0	29	44	1	8	23	21
CONSUMER & COMMERCIAL RELATIONS	0	1	0	0	0	0	16	43	1	7	14	35
CORRECTIONAL SERVICES	0	1	0	0	0	0	5	9	12	12	4	4
Correctional Centres	0	0	0	0	0	0	37	18	28	23	4	6
Detention Centres	0	0	2	0	0	0	88	50	62	43	5	7
Jails	0	0	0	1	0	0	40	59	17	29	7	2
TOTAL CORRECTIONAL SERVICES	0	1	2	1	0	0	170	136	119	107	20	19
CULTURE & COMMUNICATIONS	0	0	0	0	0	0	2	3	0	0	3	0
EDUCATION	0	0	0	0	0	0	1	2	0	0	5	4
Teachers' Superannuation Commission	0	0	0	0	0	1	3	13	0	1	6	1
TOTAL EDUCATION	0	0	0	0	0	1	4	15	0	1	11	5
ENERGY	0	0	0	0	0	0	0	0	0	0	1	0
Ontario Hydro	0	0	0	0	0	0	5	4	1	0	1	5
TOTAL ENERGY	0	0	0	0	0	0	5	4	1	0	2	5
ENVIRONMENT	0	0	2	2	0	0	1	9	3	0	5	8
FINANCIAL INSTITUTIONS	0	0	0	2	0	0	3	32	2	0	2	33
GOVERNMENT SERVICES	0	0	0	0	0	0	22	7	1	5	*4	8
HEALTH	0	0	0	2	0	2	11	13	1	1	2	12
Psychiatric Hospitals	0	0	1	0	0	0	10	4	2	0	9	18
O.H.I.P.	0	0	2	0	0	1	2	3	0	0	10	7
TOTAL HEALTH	0	0	3	2	0	3	23	20	3	1	41	37
HOUSING	0	0	2	1	0	0	19	27	5	0	11	5
Ontario Housing Corporation	0	0	0	1	0	0	0	1	1	0	1	0
TOTAL HOUSING	0	0	2	2	0	0	19	28	6	0	12	5
INDUSTRY, TRADE & TECHNOLOGY	0	0	0	0	0	0	27	0	0	0	2	3
LABOUR	0	0	2	0	0	1	17	15	6	3	125	103
Worker's Compensation Board	0	0	5	2	0	0	32	16	3	7	0	11
TOTAL LABOUR	0	0	7	2	0	1	49	31	9	10	125	114
MUNICIPAL AFFAIRS	0	0	0	1	0	0	2	1	0	0	*2	3
Municipal Employees Retirement Board	0	0	0	0	0	0	1	2	0	0	*2	4
TOTAL MUNICIPAL AFFAIRS	0	0	0	1	0	0	3	3	0	0	4	7
NATURAL RESOURCES	0	0	1	0		0	27	21	2	0	16	26
NORTHERN DEVELOPMENT & MINES	0	0	0	0	0	0	51	5	0	0	3	1
REVENUE	0	0	0	0	0	0	5	7	0	2	*21	4
SKILLS DEVELOPMENT	0	0	2	0	0	0	4	1	0	0	1	0
SOLICITOR GENERAL	0	0	4	4	0	0	2	4	0	0	8	9
TOURISM & RECREATION	0	0	0	0	0	0	1	0	0	0	1	5
TRANSPORTATION	0	0	5	0	0	0	28	21	2	1	17	12
TREASURY & ECONOMICS	0	0	0	0	0	0	1	0	0	0	0	0
ONTARIO GOVERNMENT OTHER	0	0	0	0	0	0	1	4	0	0	2	5
TOTAL ONTARIO GOVERNMENT	1	2	35	19	0	6	547	482	153	145	377	411

*One complaint was made by 249 people against four government agencies: Government Services (Public Service Superannuation Board), Municipal Affairs, Municipal Employees Retirement Board, and Revenue.

1989/90 WITH COMPARATIVE NUMBERS

INVESTIGATION DISCONTINUED						TOTAL	
ABANDONED	WITHDRAWN	SECTION 18					
1989/90	1988/89	1989/90	1988/89	1989/90	1988/89	1989/90	1988/89
3	5	3	7	10	14	18	32
7	6	5	5	35	22	91	59
0	1	4	3	10	7	19	22
0	1	1	3	5	5	22	25
7	8	10	11	50	34	132	106
0	0	2	7	1	0	6	7
2	3	1	0	9	7	32	39
2	3	3	7	10	7	28	46
4	5	5	3	6	7	29	26
6	13	4	5	30	24	84	86
0	2	2	1	5	12	17	45
6	15	6	6	35	36	101	131
7	2	7	6	19	23	64	117
12	8	4	2	27	50	64	86
43	66	35	33	388	288	535	434
73	127	94	53	656	613	1080	893
85	120	75	37	526	466	750	714
113	321	208	125	1597	1417	2429	2127
0	0	0	1	0	1	5	5
0	0	2	4	15	22	23	32
0	0	0	1	20	22	29	39
0	0	2	5	35	44	52	71
0	0	1	0	0	0	2	0
1	1	0	0	5	3	13	13
1	1	1	0	5	3	15	13
0	1	4	3	9	8	24	31
0	1	5	5	6	37	18	110
2	1	2	3	15	11	46	35
2	8	11	8	12	18	59	64
3	5	5	5	6	4	36	36
1	2	1	1	14	7	30	21
6	15	17	14	32	29	125	121
10	2	15	15	14	16	76	66
0	0	0	0	1	1	3	3
10	2	15	15	15	17	79	69
0	0	0	0	1	0	30	3
7	1	12	17	23	18	192	158
1	3	10	10	7	6	58	55
8	4	22	27	30	24	250	213
1	1	2	7	4	8	11	21
0	0	2	0	0	0	5	6
1	1	4	7	4	8	16	27
14	2	14	14	15	14	89	77
1	1	0	0	3	0	58	7
2	1	7	5	8	6	43	25
1	1	0	0	3	2	11	4
3	0	2	2	17	5	36	24
3	0	1	2	1	1	7	8
4	5	5	15	27	17	88	71
0	0	0	0	0	0	1	0
0	0	3	0	9	5	15	14
398	395	346	283	1962	1770	3819	3513

GLOSSARY

COMPLAINT SUPPORTED

NO RECOMMENDATION — At times the Ombudsman will support a complaint but decide no recommendation is appropriate given all the circumstances.

FORMAL RECOMMENDATION ACCEPTED — Those complaints where the governmental organization refuses to implement the Ombudsman's recommendation.

FORMAL RECOMMENDATION DENIED — Those complaints where the governmental organization refuses to implement the Ombudsman's recommendation.

COMPLAINANT ASSISTED — Those complaints where the Ombudsman renders assistance and usually involve tangible corrective action taken by the governmental organization.

INDEPENDENTLY RESOLVED — Many complaints are resolved independent of the Ombudsman's involvement. This can occur at any point in the investigative process prior to the Ombudsman issuing a final report.

UNSUBSTANTIATED — Those complaints where the Ombudsman's investigation reveals no grounds to support the complainant's contention.

INVESTIGATION DISCONTINUED — The Ombudsman uses his discretion to discontinue an investigation at any point prior to issuing a final report for a number of reasons:

ABANDONED — Attempts to communicate with the complainant are unsuccessful (eg., complaints from inmates of correctional facilities who are released in the course of our investigation and leave no forwarding address).

WITHDRAWN — At the request of the complainant. In many cases information is provided to the complainant and, although there is no resolution the complainant does not wish us to pursue the matter.

SECTION 18 — Refers to Section 18 of the *Ombudsman Act* which allows the Ombudsman the discretion to discontinue if, for example, there is an adequate alternative remedy or the complaint is frivolous or having regard to all the circumstances no further investigation is necessary.

STATISTICAL INFORMATION

NON-JURISDICTIONAL CLOSINGS DATA FOR FISCAL YEAR 1989/90

ORGANIZATION	INFORMATION PROVIDED	INQUIRIES MADE	RESOLUTION FACILITATED	NO ASSISTANCE POSSIBLE	TOTAL
AGRICULTURE & FOOD	13	8	4	4	29
ATTORNEY GENERAL	134	102	41	10	287
Ontario Municipal Board	5	3	2	2	12
Public Trustee	2	3	8	0	13
TOTAL ATTORNEY GENERAL	<u>141</u>	<u>108</u>	<u>51</u>	<u>12</u>	<u>312</u>
CITIZENSHIP	0	3	0	1	4
Human Rights Commission	27	24	6	9	66
TOTAL CITIZENSHIP	<u>27</u>	<u>27</u>	<u>6</u>	<u>10</u>	<u>70</u>
COLLEGES & UNIVERSITIES	24	39	12	5	80
COMMUNITY & SOCIAL SERVICES	115	133	56	20	324
Social Assistance Review Board	6	14	5	0	25
TOTAL COMMUNITY & SOCIAL SERVICES	<u>121</u>	<u>147</u>	<u>61</u>	<u>20</u>	<u>349</u>
CONSUMER & COMMERCIAL RELATIONS	38	45	33	13	129
CORRECTIONAL SERVICES	26	16	7	0	49
Correctional Centres	88	14	6	4	112
Detention Centres	142	23	11	10	186
Jails	61	28	13	9	111
TOTAL CORRECTIONAL SERVICES	<u>317</u>	<u>81</u>	<u>37</u>	<u>23</u>	<u>458</u>
CULTURE & COMMUNICATIONS	1	2	1	0	4
EDUCATION	13	6	3	2	24
Teachers' Superannuation Commission	5	2	1	2	10
TOTAL EDUCATION	<u>18</u>	<u>8</u>	<u>4</u>	<u>4</u>	<u>34</u>
ENERGY	0	2	0	1	3
Ontario Hydro	7	8	6	2	23
TOTAL ENERGY	<u>7</u>	<u>10</u>	<u>6</u>	<u>3</u>	<u>26</u>
ENVIRONMENT	23	22	11	7	63
FINANCIAL INSTITUTIONS	15	17	3	0	35
GOVERNMENT SERVICES	14	17	50	5	86
HEALTH	23	16	2	5	46
Psychiatric Hospitals	36	19	2	7	64
O.H.P.	20	16	9	1	46
TOTAL HEALTH	<u>79</u>	<u>51</u>	<u>13</u>	<u>13</u>	<u>156</u>
HOUSING	74	121	23	20	238
Ontario Housing Corporation	1	3	0	2	6
TOTAL HOUSING	<u>75</u>	<u>124</u>	<u>23</u>	<u>22</u>	<u>244</u>
INDUSTRY, TRADE & TECHNOLOGY	3	0	0	0	3
LABOUR	41	69	24	10	144
Workers' Compensation Board	180	479	211	22	892
TOTAL LABOUR	<u>221</u>	<u>548</u>	<u>235</u>	<u>32</u>	<u>1036</u>
MUNICIPAL AFFAIRS	11	11	3	4	29
Municipal Employees Retirement Board	3	3	0	0	6
TOTAL MUNICIPAL AFFAIRS	<u>14</u>	<u>14</u>	<u>3</u>	<u>4</u>	<u>35</u>
NATURAL RESOURCES	34	25	6	25	90
NORTHERN DEVELOPMENT & MINES	3	0	0	1	4
REVENUE	25	26	13	3	67
SKILLS DEVELOPMENT	7	11	2	0	20
SOLICITOR GENERAL	52	18	4	0	74
TOURISM & RECREATION	14	2	0	1	17
TRANSPORTATION	33	78	44	11	166
TREASURY & ECONOMICS	1	1	0	0	2
ONTARIO GOVERNMENT OTHER	<u>35</u>	<u>15</u>	<u>9</u>	<u>6</u>	<u>65</u>
PROVINCIAL TOTAL	<u>1355</u>	<u>1444</u>	<u>631</u>	<u>224</u>	<u>3654</u>

STATISTICAL INFORMATION

NON-JURISDICTIONAL CLOSINGS DATA FOR FISCAL YEAR 1989/90 (CONT'D.)

ORGANIZATION	INFORMATION PROVIDED	INQUIRIES MADE	RESOLUTION FACILITATED	NO ASSISTANCE POSSIBLE	TOTAL
PRIVATE	409	196	55	27	687
MUNICIPAL	200	126	44	12	382
FEDERAL	94	84	34	7	219
COURTS	80	15	3	2	100
OTHER	34	41	16	15	106
NON-PROVINCIAL TOTAL	817	462	152	63	1494
GRAND TOTAL	2172	1906	783	287	5148

DISPOSITION OF NON-JURISDICTIONAL COMPLAINTS, INFORMATION REQUESTS/SUBMISSIONS FISCAL YEAR 1989/90, WITH COMPARATIVE NUMBERS

Organization	Information Provided		Inquiries Made/ Resolution Facilitated		No Action Possible		Total		Percent	
	1989/90	1988/89	1989/90	1988/89	1989/90	1988/89	1989/90	1988/89	1989/90	1988/89
Provincial	9528	7156	4792	3405	648	469	14968	11030	56.8	51.3
Private	5137	5058	565	355	155	123	5857	5536	22.2	25.8
Municipal	1271	1458	325	302	45	36	1641	1796	6.2	8.3
Federal	1402	1464	288	219	54	52	1744	1735	6.6	8.1
Courts	547	454	32	17	36	39	615	510	2.4	2.4
Other	1129	688	191	78	212	112	1532	878	5.8	4.1
TOTALS	19014	16278	6193	4376	1150	831	26357	21487	100.0	100.0

ACTUAL EXPENDITURES FOR THE FISCAL YEAR 1989/90

Salaries	\$4,878,600	Other Services	\$171,000
Employee Benefits	900,500	Furniture & Office Equipment	26,700
Travel & Relocation	162,700	Computer Equipment & Software	106,400
Telephone, Mailing & Delivery	263,500	Office Supplies & Devices	88,600
Building Rent	630,500	Books & Publications	37,900
Equipment & Other Rentals	107,800	Printing of Reports & Procedures	35,500
Professional Services	117,900	Other Supplies & Equipment	112,500
Security Services	40,500		
Computer Equipment & Software Maintenance	56,300		
TOTAL \$7,736,900			

OMBUDSMAN STAFF

TO MARCH 1990

AINSLIE, Margaret
ALLAN, John
ANDERSON, Marney
ARKELL, Tim
BAKER, Betty
BERNIER, Suzanne
BERNIQUEZ, Jean-Francois
BISCHOPING, Johanna
BLENKINSOP, Rosemarie
BOMBERRY, Donna
BOOTHBY, Paula
BOURNS, Maureen
BRINDLE, Ginette
BROCKENSHIRE, Deborah
BROWN, Anne
BRUYERE, Frank
BRYANT, Dale
BUCKSTEIN, Elaine
BURROWS, Patricia
BYLSMA, Klaas
CARL, Mary
CARLINO, Gerry
CASSON-ROBIN, Barbara
CEYSSSENS, Paul
CEDDIA, Antonella
CENTRONE, Irma
CHAMBERS, Sharon
CHIASSON, Lucille
CONROY, Nadene
COOLMAN, Joyce
CORION, Margaret
CORREIA, Jackie
CORRIGAN, Francis
CROSSLEY, Barbara
CUMMINGS, Penny
CUTLER, Jeffrey
DAYA, Nazlin
DEAR, Rosie
DEARDEN, Sylvana
DEODAT, Zalina
DRAWBELL, Steven
DUONG, Chinn
EVANS, Cathy
FARNCOMBE, Peter
FENTON, Mary Jane
FERNANDEZ, Sherry
FITZPATRICK, John

FRIEDMAN, Lois
GERHARD, Perry
GRIFFIN, Dianne
HARRISON, Joan
HASLAM, Sue
HIGGINS, Marylynn
HIRST, Barbara
HISCOCK, Lee
HOBSON, Jim
HOFFMAN, Judith
HOLMES, Jackie
HUNG, Elsa
HUTCHINSON, Esla
IAROCCHI, Jacquelynne
IRONS, Alison
IRVINE, Thomas
ISOVSKI, Azire
JOHNSON, Gini
JONES, Christine
KATAMAY, Olga
KEIL, Martha
KERSHAW, Janet
KIESECKER, Barbara
KING, Dianne
KNUDSON, Inez
KUTA, Elizabeth
LA ROSA, George
LAMPKIN, Lorna
LANTHIER, Elise
LATINCIC, Mary Ann
LAUZON, Diane
LEBLANC, Sharon
LEE, Allan
LEE, Barbara
LEE, Judith
LEGARDO, Lourdes
LOGAN, Rosemary
LUCAS, Lourine
LYNCH, Gwen
MARKIEWICZ, Eva
MARTIN, Christine
MAY, Laurel
McCOLLIN, Phyllis
McLEOD, Maret
MENNIE, Florence
MESLIN, Eleanor
MILLS, Allan

MONETTE, LaVerne
MORRA, Dean
MORRISH, Ginette
MORRISON, Gail
MORTON, Margret
NICHOLAS, James
NICHOLSON, Sherrie
NUGENT, Mary Elizabeth
ORTVED, Janet
PEASE, Daphne
PEASE, Irv
PELLETIER, Allan
PENFOLD, Kathy
PFAFF, Gail
POONI, Ramneek
POPA, Manuela
PRESNER, Matilda
RAJASINGHAM, Peter
ROBERT, D'Arcy
RODGERS, Faye
ROMAN, Josie
ROSE, Janet
SCHULZ, Wolfgang
SCHWARTZ, Andrea
SEALEY, Carol
SEMENCIW, Joe
SKENE, Tom
SLOAN, Todd
SORA, David
SOUSA, Maria
SWEENEY, Yvonne
THEN, Milan
THERRIAULT, Kathleen
THOMS, Joanne
TONER, Donna
VAN KLEEF, Joy
VIRC, Elizabeth
WALCOTT, Margaret
WESTON, Elizabeth
WHEELER, Karen
WORKU, Habte
WORTHINGTON, Barbara
WYNDELS, Lisa
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YUEN, Jacqueline
ZACKS, Michael

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Toronto, M5S 2C7
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232 Erie Street West
Main Floor
Windsor N9A 6B5
Tel.: (519) 977-8006

RECOMMENDATION DENIED TABLES

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
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MINISTRY OF EDUCATION

Special Report Mrs. H		1. That the Attorney General, in conjunction with the Minister of Education, take appropriate steps to amend the <i>Teachers' Superannuation Act</i> , R.S.O. 1980, c.494 and the <i>Teachers' Superannuation Act</i> , 1983, c.84 to be in compliance with section 15(1) of the <i>Charter of Rights and Freedoms</i> , effective April 17, 1985; and	17 Rec. 4	That the Ministry of Education cause the Teachers' Superannuation Commission to pay Mrs. H survivor benefits as of August 8, 1985, and that the Ministry of Education, within three months of this motion, on or about November 22, 1988, report to this Committee on the advisability of extending this benefit as a matter of right to spouses of Teachers' Superannuation Fund members adversely affected.	The necessary amendments have been enacted as S.O. 1989, c.92, ss. 70-72. Payment has been made to Mrs. H.
		2. That following these amendments, the Teachers' Superannuation Commission take the necessary steps to issue a dependent's allowance to Mrs. H. in accordance with section 36(1) of the <i>Teachers' Superannuation Act</i> , R.S.O. 1980, c.494, effective from the first day of her inquiry for same.	17 Rec. 5	That the Committee direct the working group (as set up by the Minister of Education) to deal with the issue of Mrs. H's pension and the general issue of pensions, as soon as possible.	
	and, in the alternative:	1. That the Attorney General, in conjunction with the Minister of Education, take appropriate steps to amend the <i>Teachers' Superannuation Act</i> , R.S.O. 1980, c. 494 and the <i>Teachers' Superannuation Act</i> , 1983, c.84 to remove the provision which he has found to be improperly discriminatory; and	17 Rec. 6	That the minister of Education, in conjunction with any other governmental organization he deems necessary, issue an <i>ex gratia</i> payment to Mrs. H as soon as possible, effective from the first day of the month following the date of her inquiry for same, until the amended provision is in force. Such a payment can be made through the annual budgetary process, so that no question will arise as to the authority of the Ministry to make the payments; and	

RECOMMENDATION DENIED TABLES

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
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MINISTRY OF EDUCATION

(cont'd.)

2. That the Minister of Education, in conjunction with any other governmental organization he deems necessary, issue an *ex gratia* payment to Mrs. H as soon as possible, effective from the first day of the month following the date of her inquiry for same, until the amended provision is in force. Such payment can be made by providing for it through the annual budgetary process, so that no question will arise as to the authority of the Ministry to make the payments. Also, he recommended that payments be made to any other surviving spouses who have been denied a full dependent's or survivor allowance by the Teachers' Superannuation Commission pursuant to the *Teachers' Superannuation Act* or the *Teachers' Superannuation Act, 1983* payable from the first day of the month following the date of their request for a benefit as a result of his recommendation.

That the Minister of Education, in conjunction with any other governmental organization he deems necessary, make spousal payments to any other surviving spouses who have been denied a full dependent or survivor allowance by the *Teachers' Superannuation Act* or the *Teachers' Superannuation Act, 1983*, payable from the first day of the month following the date of their request for a benefit as a result of this recommendation.

RECOMMENDATION DENIED TABLES

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN		RECOMMENDATION OF COMMITTEE	PRESENT STATUS
			STANDING COMMITTEE	REPORT NO.		

MINISTRY OF THE ENVIRONMENT

11	10	That the Minister cancel his decision to accept the adjudicator's recommendation not to pay the complainant's claim for interest; that the Minister accept and consider the claim as one properly made under the <i>Public Works Creditors Payment Act</i> .	12 Rec. 2	That the Minister of the Environment accept in principle that the Crown may, in the appropriate circumstances, pay a claimant interest due pursuant to a term of a contract with a contractor; that the Minister consider the merits of the complainant's claim for interest owing on the principal amount in question and formulate a decision whether or not to pay the claim.	The complainant's counsel and counsel for the Ministry of the Environment are presently discussing the former's Draft Submission to Arbitration with a view to reaching agreement on the terms.
			13 Rec. 2	That an independent adjudicator be appointed to assess the matter of whether or not interest is owed to the complainant.	
			15 Rec. 1	That the adjudication be styled as a hearing in the ordinary course, with an opportunity given to the parties to call and lead any evidence they consider appropriate;	
				That the principal amount upon which interest is to be calculated be clearly stated as a sum not to exceed \$27,730.00;	
				That the rate of interest applied by the adjudication be determined in accordance with the <i>Courts of Justice Act</i> ; and	

RECOMMENDATION DENIED TABLES

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION DENIED	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
MINISTRY OF THE ENVIRONMENT (cont'd.)					
MINISTRY OF HEALTH					
Special Report Mr. K, Mr. & Mrs. L, Ms. M		That the Ministry amend Ontario Reg. 596/85 in order to remove all age restrictions pertaining to the provision of companion travel grants under the Northern Health Travel Grant Program.	17 Rec. 2	That the Ministry amend Ontario Reg. 596/85 in order to remove all age restrictions pertaining to the provision of companion travel grants under the Northern Health Travel Grant Program.	The Ministry has advised the Ombudsman that the whole program under which travel grants are provided for those requiring health care is under review. A team from the Ministry has been travelling to various communities in the north and receiving representations. A proposal should be ready in May, 1990.
Special Report Mrs. J		Ontario Health Insurance Program That the Ministry of Health/OHIP reconsider including in the Schedule of Benefits the cost of donor sperm as part of the artificial insemination procedure currently covered under the Schedule of Benefits.	17 Rec. 3	That the Ministry of Health arrange to provide donor sperm to Mr. and Mrs. J at no cost as soon as an acceptable test has been developed to ensure that donor sperm is free from the AIDS virus.	The Ministry advised in March, 1989 that it was developing a policy for the provision of semen to Ontarians at no cost, and that the policy would be implemented in 1989. Further inquiries indicate that the policy is still under review, and no implementation date has been established.

RECOMMENDATIONS UNDER SECTION 22(3)(d) OR (e) AS TABLES

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN		PRESENT STATUS
					STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	

MINISTRY OF GOVERNMENT SERVICES

2	60	That the Ministry pay the complainant the sum of \$1,318.00 for his losses and legal expenses.		The Ministry of Government Services stated that it had no authority to comply with the recommendation.	3 Rec. 34	That the <i>Audit Act</i> and the <i>Financial Administration Act</i> be amended to provide that when such a recommendation is made by the Ombudsman after all necessary and appropriate requirements of the <i>Ombudsman Act</i> have been adhered to by his Office, and when entirely accepted by the governmental organization, "a lawful authority" is created for such money to be paid by the governmental organization out of the Consolidated Revenue Fund. Further, that the Ombudsman's Office and the Ministry of Government Services resume their discussions on the merits of the Ombudsman's recommendation and that the results of these discussions are to be reported to the Standing Committee.	The Ministry of Treasury and Economics has responded and proposed that the <i>Ombudsman Act</i> is the more appropriate statute for the amendment, since the purpose of the amendment directly relates to procedure under that Act. The Ministry proposed that the <i>Ombudsman Act</i> be amended as follows: "Where the Ombudsman, in a report under subsection 22(3), recommends to the governmental organization to whom the report is made that the government- tal organization pay a specified sum to or for the benefit of the complainant to reimburse the complainant for an ascertainable financial loss suffered by him in the matter complained of, and where the Minister to whom a copy of the report is sent under that subsection accepts the recommendation at the amount mentioned therein or at a lesser amount acceptable to the Ombudsman and there is no authorization, apart from this section, for the payment of the sum so agreed on, such sum
						That the <i>Ombudsman Act</i> be amended as follows: "Where the Ombudsman, in a report under subsection 22(3), recommends to the governmental organization to whom the report is made that the governmental or-	

RECOMMENDATIONS UNDER SECTION 22(3)(d) OR (e) AS TABLES

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
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MINISTRY OF GOVERNMENT SERVICES (cont'd.)

ganization pay a specified sum to or for the benefit of the complainant to compensate the complainant for an ascertainable financial loss suffered by him, and where the Minister to whom a copy of the report is sent under that subsection accepts the recommendation at the amount mentioned therein or at a lesser amount acceptable to the Ombudsman and there is no authorization, apart from this section, for the payment of the sum so agreed on, such sum shall, where it is less than \$1,000 and has been ascertained as required by this section, be paid by the Treasurer out of the Consolidated Revenue Fund on the authorization of the Minister concerned, and where the sum so agreed on is \$1,000 or more, it shall be paid by the Treasurer out of the Consolidated Revenue Fund on the order of the Lieutenant Governor in Council approving such payment as is recommended by the Minister concerned."

may, where it is less than \$1,000, be paid by the Treasurer out of the Consolidated Revenue Fund on the authorization of the Minister concerned, and where the sum so agreed on is \$1,000 or more, it may be paid by the Treasurer out of the Consolidated Revenue Fund on the order of the Lieutenant Governor in Council approving such payment as is recommended by the Minister concerned."

RECOMMENDATIONS UNDER SECTION 22(3)(d) OR (e) AS TABLES

OMBUDSMAN REPORT NUMBER	DETAILED SUMMARY NUMBER	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN STANDING COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
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MINISTRY OF GOVERNMENT SERVICES

(cont'd.)

					12, p. 16	The Committee noted that the Attorney General has stated that recommendations for these amendments to the Act would be placed before Cabinet. The Committee expects to be dealing with them in the near future.	
					13, p. 8	The Committee recommended that the Attorney General table immediately in the Legislature a bill amending the <i>Ombudsman Act</i> .	
					15, p. 17	The Committee recommended "that the amendments to the <i>Ombudsman Act</i> be tabled in the legislature without delay; and that all parties cooperate in speeding the progress of the amending bill through the house."	
					16, p. 8	The Committee recommends that the Attorney General give priority to introducing and approving amendments to the <i>Ombudsman Act</i> in the current or next session of the Legislature.	Bill 80, An Act to Amend the <i>Ombudsman Act</i> and the <i>Child and Family Services Act</i> , was given first reading on November 21, 1989.

RECOMMANDATIONS AUX TERMES DE L'ALINÉA 22(3)(d) OU (e) SOUS FORME DE TABLEAUX

N° DU RAPPORT DE L'OMBUDSMAN	N° DU RÉSUMÉ DÉTAILLÉ	RECOMMANDATION AUX TERMES DE L'ALINÉA 22(3) (d) ou (e)	DATE DE LA RÉPONSE	NATURE DE LA RÉPONSE	EXAMINÉE DANS LE RAPPORT N° DU COMITÉ PERMANENT	RECOMMANDATION DU COMITÉ	SITUATION ACTUELLE
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MINISTÈRE DES SERVICES GOUVERNEMENTAUX (suite)

12, p. 16

Le comité a noté que le procureur général a déclaré que la recommandation de modification à la loi serait déposée devant le Conseil des ministres. Le comité prévoit s'en occuper prochainement.

13, p. 8

Le comité a recommandé que le procureur général dépose immédiatement à l'Assemblée législative un projet de loi visant à modifier la *Loi sur l'ombudsman*.

15, p. 17

Le comité a recommandé "que les modifications à la *Loi sur l'ombudsman* soient déposées sans tarder à l'Assemblée législative, et que toutes les parties collaborent pour accélérer les progrès du projet de loi modificateur à l'Assemblée."

16, p. 8

Le comité recommande que le procureur général donne la priorité à l'introduction et à l'approbation des modifications à la *Loi sur l'ombudsman* au cours de la session actuelle ou de la prochaine session de l'Assemblée législative.

Le Bill 80, loi modifiant la *Loi sur l'Ombudsman*, et la *Loi sur les services à l'enfance et à la famille* à fait l'objet d'une première lecture le 21 novembre 1989.

RECOMMANDATIONS AUX TERMES DE L'ALINÉA 22(3)(d) OU (e) SOUS FORME DE TABLEAUX

N° DU RAPPORT DE L'OMBUDSMAN	N° DU RÉSUMÉ DÉTAILLÉ	RECOMMANDATION AUX TERMES DE L'ALINÉA 22(3) (d) ou (e)	DATE DE LA RÉPONSE	NATURE DE LA RÉPONSE	EXAMINÉE DANS LE RAPPORT N° DU COMITÉ PERMANENT	RECOMMANDATION DU COMITÉ	SITUATION ACTUELLE
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MINISTÈRE DES SERVICES GOUVERNEMENTAUX
(suite)

gouvernemental auquel le rapport est soumis que l'organisme gouvernemental verse une somme spécifiée au plaignant ou au bénéfice du plaignant en dédommagement d'une perte financière vérifiable qu'il a subie, et lorsque le ministre auquel un exemplaire du rapport est envoyé aux termes de ce paragraphe accepte la recommandation de verser le montant mentionné dans le rapport ou un montant moindre acceptable par l'ombudsman, et s'il n'existe pas d'autorisation autre que ce paragraphe pour le paiement de la somme convenue, cette somme, si elle est inférieure à 1000 \$ et qu'elle a été vérifiée comme exigé par le Trésorier à partir du Fonds du revenu consolidé sur l'autorisation du ministre concerné; si la somme convenue est de 1000 \$ ou plus, elle sera payée par le Trésorier à partir du Fonds du revenu consolidé sur l'autorisation du ministre concerné; si la somme convenue est de 1000 \$ ou plus, elle sera payée par le Trésorier à partir du Fonds du revenu consolidé sur ordonnance du Lieutenant-gouverneur en conseil approuvant ce paiement comme recommandé par le ministre concerné."

La modification a été incluse dans l'ensemble des modifications à la *Loi sur l'ombudsman*.

de la somme convenue, cette somme, si elle est inférieure à 1000 \$ et qu'elle a été vérifiée comme exigé par ce paragraphe, sera payée par le Trésorier à partir du Fonds du revenu consolidé sur ordonnance du Lieutenant-gouverneur en conseil approuvant ce paiement comme recommandé par le ministre concerné."

RECOMMANDATIONS AUX TERMES DE L'ALINÉA 22(3)(d) OU (e) SOUS FORME DE TABLEAUX

N° DU RAPPORT DE L'OMBUDSMAN	N° DU RÉSUMÉ DÉTAILLÉ	RECOMMANDATION AUX TERMES DE L'ALINÉA 22(3) (d) ou (e)	DATE DE LA RÉPONSE	NATURE DE LA RÉPONSE	EXAMINÉE DANS LE RAPPORT N° DU COMITÉ PERMANENT	RECOMMANDATION DU COMITÉ	SITUATION ACTUELLE
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MINISTÈRE DES SERVICES GOUVERNEMENTAUX

2	60	Que le ministère verse au plaignant la somme de 1 318 00 \$ en compensation des pertes et frais juridiques.	3	Recomm. 34	Que la Loi sur la vérification des comptes publics et la Loi sur l'administration financière soient modifiées pour prévoir que, lorsqu'une telle recommandation sera faite par l'ombudsman après que son bureau se sera conformé à toutes les exigences nécessaires et appropriées de la Loi sur l'ombudsman et lorsqu'elle aura été entièrement acceptée par l'organisme gouvernemental, une "autorité légale" soit créée pour permettre à l'organisme gouvernemental d'effectuer ce paiement à partir du Fonds du revenu consolidé. Par ailleurs, que le Bureau de l'ombudsman et le ministère des Services gouvernementaux reprennent leurs discussions sur le bien-fondé de la recommandation de l'ombudsman et que les résultats de ces discussions soient soumis au comité permanent.	Le ministère du Trésor et de l'Économie a suggéré dans sa réponse que la modification soit apportée à la Loi sur l'ombudsman, celle-ci étant plus appropriée étant donné que l'objet de la modification a un rapport direct avec la procédure utilisée aux termes de cette loi. Le ministère a proposé que la Loi sur l'ombudsman soit modifiée comme suit : "Lorsque l'ombudsman, dans un rapport établi aux termes du paragraphe 22(3) recommande à l'organisme gouvernemental auquel le rapport est soumis que l'organisme gouvernemental verse une somme spécifiée au plaignant ou au bénéficiaire du plaignant en dédommement d'une perte financière vérifiable qu'il a subie, et lorsque le ministre auquel un exemplaire du rapport a été envoyé aux termes de ce paragraphe accepte la recommandation de verser le montant mentionné dans le rapport ou un montant moindre acceptable par l'ombudsman, et s'il n'existe pas d'autorisation autre que ce paragraphe pour le paiement
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TABLEAU DES RECOMMANDATIONS REJETÉES

NUMÉRO DU RAPPORT DE L'OMBUDSMAN	NUMÉRO DU RÉSUMÉ DÉTAILLÉ	RECOMMANDATION REJETÉE	EXAMINÉE DANS LE RAPPORT DU COMITÉ PERMANENT N°	RECOMMANDATION DU COMITÉ	SITUATION ACTUELLE
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MINISTÈRE DE L'ENVIRONNEMENT
(suite)

Que le coût de l'arbitrage soit assumé par le ministère, à l'exception des frais juridiques du plaignant.

MINISTÈRE DE LA SANTÉ

Rapport spécial
M. K,
M. et Mme L,
Mme M

28

Que le ministère modifie le règlement de l'Ontario 596/85 afin d'éliminer toutes les limitations d'âge à la prestation des allocations de voyage aux accompagnateurs consenties aux termes du Programme de subventions pour frais de transport à des fins médicales dans le Nord.

17
Recomm. 2

Que le ministère modifie le règlement de l'Ontario 596/85 afin d'éliminer toutes les limitations d'âge à la prestation des allocations de voyage aux accompagnateurs consenties aux termes du Programme de subventions pour frais de transport à des fins médicales dans le Nord.

Le ministère a fait savoir à l'ombudsman que l'ensemble du programme aux termes duquel des allocations de voyage sont accordées aux personnes ayant besoin de soins médicaux est à l'étude. Une équipe de fonctionnaires du ministère s'est rendue dans diverses collectivités du Nord pour écouter leurs observations. Une proposition devrait être prête en mai 1990.

Assurance-santé de l'Ontario

Rapport spécial
Mme J

17
Recomm. 3

Que le ministère de la Santé/OHIP examine la possibilité d'inclure à l'annexe relative aux avantages sociaux le coût du sperme du donneur comme faisant partie de la procédure d'insémination artificielle couverte par ladite annexe.

Que le ministère de la Santé fasse en sorte qu'un donneur fournisse du sperme à M. et Mme J. gratuitement dès qu'un test acceptable aura été mis au point pour vérifier que le sperme du donneur ne contient pas le virus du SIDA.

Le ministère a fait savoir en mars qu'il est en train de mettre au point une politique relativement à la prestation gratuite de sperme aux Ontariens et que cette politique serait mise en oeuvre en 1989. Les derniers renseignements indiquent que la politique est encore à l'étude et qu'aucune date de mise en oeuvre n'a été fixée.

TABLEAU DES RECOMMANDATIONS REJETÉES

NUMÉRO DU RAPPORT DE L'OMBUDSMAN	NUMÉRO DU RÉSUMÉ DÉTAILLÉ	RECOMMANDATION REJETÉE	EXAMINÉE DANS LE RAPPORT DU COMITÉ PERMANENT N.º	RECOMMANDATION DU COMITÉ	SITUATION ACTUELLE
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MINISTÈRE DE L'ENVIRONNEMENT

11	10	Que le ministre annule sa décision d'accepter les recommandations de l'évaluateur de ne pas verser les intérêts demandés par le plaignant; que le ministre accepte et étudie la demande comme étant fondée aux termes de la loi intitulée en anglais <i>Public Works Creditors Payment Act</i> et abrogée en 1975.	12 Recomm. 2	Que le ministre de l'Environnement accepte en principe que la Couronne puisse, dans les circonstances appropriées, payer à un plaignant les intérêts dus conformément aux conditions d'un contrat passé avec un entrepreneur; que le ministre examine le bien-fondé de la demande des intérêts dus sur le principal en question et décide s'il paiera la somme demandée ou non.	L'avocat du plaignant et l'avocat du ministère de l'Environnement examinent actuellement la proposition soumise par le premier aux fins d'arbitrage dans le but de parvenir à un accord.
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13
Recomm. 2
Qu'un évaluateur indépendant soit nommé pour évaluer la question de savoir si des intérêts sont dus ou non au plaignant.

15
Recomm. 1
Que l'évaluation soit effectuée sous forme d'audience ordinaire, avec permission aux deux parties de produire et de présenter toutes preuves qu'elle juge appropriées;

Que le montant principal sur lequel sont calculés les intérêts soit nettement énoncé comme une somme ne devant pas dépasser 27 730 \$;

Que le taux d'intérêt appliqué par l'évaluation soit fixé conformément à la *Loi sur les tribunaux judiciaires*; et

TABLEAU DES RECOMMANDATIONS REJETÉES

NUMÉRO DU RAPPORT DE L'OMBUDSMAN	NUMÉRO DU RÉSUMÉ DÉTAILLÉ	RECOMMANDATION REJETÉE	EXAMINÉE DANS LE RAPPORT DU COMITÉ PERMANENT N°	RECOMMANDATION DU COMITÉ	SITUATION ACTUELLE
MINISTÈRE DE L'ÉDUCATION (suite)					
		2. Que le ministre de l'Éducation, de concert avec tout organisme du gouvernement qu'il juge nécessaire, accorde une allocation <i>ex gratia</i> à M ^{me} H. dès que possible, à compter du premier jour du mois suivant la date de sa demande, jusqu'à ce que la disposition modifiée entre en vigueur. Ce paiement pourra être effectué dans le cadre du budget annuel pour éviter toute question relativement à la capacité du ministère d'effectuer le paiement. Il a également recommandé qu'un paiement soit accordé à tout autre conjoint survivant auquel la Commission du régime de retraite des enseignants a refusé une prestation au titre de personne à charge ou de survivant aux termes de la <i>Loi sur le régime de retraite des enseignants</i> ou de la <i>Loi de 1983 sur le régime de retraite des enseignants</i> , ledit paiement étant payable à compter du premier jour du mois suivant la date de la demande de prestation déposée à l'issue de cette recommandation.		Que le ministre de l'Éducation, de concert avec tout autre organisme du gouvernement qu'il juge nécessaire, accorde un paiement à tout autre conjoint survivant à qui a été refusé une prestation au titre de personne à charge ou de survivant aux termes de la <i>Loi sur le régime de retraite des enseignants</i> ou de la <i>Loi de 1983 sur le régime de retraite des enseignants</i> , ledit paiement étant payable à compter du premier jour du mois suivant la date de la demande de prestation déposée à l'issue de cette recommandation.	

TABLEAU DES RECOMMANDATIONS REJETÉES

NUMÉRO DU RAPPORT DE L'OMBUDSMAN	NUMÉRO DU RÉSUMÉ DÉTAILLÉ	RECOMMANDATION REJETÉE	EXAMINÉE DANS LE RAPPORT DU COMITÉ PERMANENT N°	RECOMMANDATION DU COMITÉ	SITUATION ACTUELLE
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MINISTÈRE DE L'ÉDUCATION

1. Que le Procureur général, de concert avec le ministre de l'Éducation, prenne les mesures appropriées pour modifier la *Loi sur le régime de retraite des enseignants*, S.R.O. 1980, c.494 et la *Loi de 1983 sur le régime de retraite des enseignants*, c.84 pour les rendre conformes à l'article 15(1) de la *Charte des droits et libertés*, à compter du 17 avril 1985; et

2. Que, suite à ces amendements, la Commission du régime de retraite des enseignants prenne les mesures nécessaires pour délivrer une allocation pour personne à charge à M^{me} H. conformément à l'article 36(1) de la *Loi sur le régime de retraite des enseignants*, S.R.O. 1980, c.494, à compter du premier jour de sa demande.

et, subsidiairement :

1. Que le Procureur général, de concert avec le ministre de l'Éducation, prenne les mesures appropriées pour modifier la *Loi sur le régime de retraite des enseignants*, S.R.O. 1980, c.494 et la *Loi de 1983 sur le régime de retraite des enseignants*, c.84 pour supprimer les dispositions qu'il a trouvées improprement discrimina-toires; et

17
Recomm. 4

17
Recomm. 5

17
Recomm. 6

Que le ministère de l'Éducation en-joigne à la Commission du régime de retraite des enseignants de payer à M^{me} H. des prestations de survivant à compter du 8 août 1985 et que le ministère de l'Éducation, dans les trois mois qui suivront cette motion, le 22 novembre 1988 ou aux envi-rons, fasse rapport à ce comité sur l'opportunité d'étendre ces presta-tions, de droit, aux conjoints des membres de la Caisse de retraite des enseignants qui ont subi des dom-mages.

Que le comité enjoigne au groupe de travail (constitué par le ministre de l'Éducation) d'examiner la question de la pension de M^{me} H. et la ques-tion générale des pensions, dès que possible.

Que le ministre de l'Éducation, de concert avec tout organisme du gou-vernement qu'il juge nécessaire, ac-corde une allocation *ex gratia* à M^{me} H. dès que possible, à compter du premier jour du mois suivant la date de sa demande, jusqu'à ce que la disposition modifiée entre en vigueur. Ce paiement pourra être effectué dans le cadre du budget annuel pour éviter toute question relativement à la capacité du ministère d'effectuer le paiement.

Les modifications nécessaires ont été adoptées aux par. 70-72, c.92, S.O. 1989. Un paiement a été octroyé à M^{me} H.

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BUREAUX DE L'OMBUDSMAN

THUNDER BAY

213, chemin Red River
Thunder Bay (Ontario) P7B 1A5
Tél. : (807) 345-9235

TIMMINS

30-32, rue Balsam sud
Timmins (Ontario) P4N 2C6
Tél. : (705) 268-2161

TORONTO

125, Queen's Park
Toronto (Ontario) M5S 2C7
Tél. : (416) 586-3300

Interurbain sans frais :

1-800-263-1830

Interurbain sans frais en français :

1-800-387-2620

WINDSOR

232, rue Erie ouest
Rez-de-chaussée
Windsor (Ontario) N9A 6B5
Tél. : (519) 977-8006

KENORA

100, rue Chipman, unité 10
Market Square
Kenora (Ontario) P9N 4E4
Tél. : (807) 468-2851

LONDON

402, rue Adelaide nord
London (Ontario) N6B 3H6
Tél. : (519) 675-7741

NORTH BAY

450, rue Main ouest, unité 2
North Bay (Ontario) P1B 2V3
Tél. : (705) 476-5800

OTTAWA

Bureau 308, 151, rue Slater
Ottawa (Ontario) K1P 5H3
Tél. : (613) 239-1487

SAULT-SAINTE-MARIE

500, rue Bay
Sault-Sainte-Marie (Ontario) P6A 1X5
Tél. : (705) 759-2871

SUDBURY

21, rue Durham
Sudbury (Ontario) P3C 5E2
Tél. : (705) 671-9880

PERSONNEL DU BUREAU DE L'OMBUDSMAN

JUSQUE EN MARS 1990

MONETTE, LaVerne	FRIEDMAN, Lois	AINSLIE, Margaret
MORRA, Dean	GERHARD, Perry	ATLAN, John
MORRISH, GINETTE	GRIFFIN, Dianne	ANDERSON, Marney
MORRISON, Gail	HARRISON, Joan	ARKELL, Tim
MORTON, Margaret	HASLAM, Sue	BAKER, Betty
NICHOLAS, James	HIGGINS, Marylyn	BERNIER, Suzanne
NICHOLSON, Sherrie	HIRST, Barbara	BERNIQUEZ, Jean-Francois
NUGENT, Mary Elizabeth	HISCOCK, Lee	BISCHOPING, Johanna
ORTVED, Janet	HOBSON, Jim	BLENKINSOP, Rosemarie
PEASE, Daphne	HOFFMAN, Judith	BOMBERRY, Donna
PEASE, Irv	HOLMES, Jackie	BOOTHBY, Paula
PELLETIER, Allan	HUNG, Elsa	BOURNS, Maureen
PENFOLD, Kathy	HUTCHINSON, Esia	BRINDLE, GINETTE
PFAFF, Gail	IAROCCHI, Jacquelynn	BROCKENSHIRE, Deborah
POONI, Ranneek	IRONS, Alison	BROWN, Anne
POPA, Manuela	IRVINE, Thomas	BRUYERE, Frank
PRESNER, Matilda	ISOVSKI, Azire	BRYANT, Dale
RAJASINGHAM, Peter	JOHNSON, Gini	BUCKSTEIN, Elaine
ROBERT, D'Arcy	JONES, Christine	BURROWS, Patricia
RODGERS, Faye	KATAMAY, Olga	BYLSMA, Klaas
ROMAN, Josie	KEIL, Martha	CARL, Mary
ROSE, Janet	KERSHAW, Janet	CARLINO, Gerry
SCHULZ, Wolfgang	KIESBECKER, Barbara	CASSON-ROBIN, Barbara
SEALEY, Carol	KING, Dianne	CEYSSENS, Paul
SEMENTCIW, Joe	KNUDSON, Inez	CEDDIA, Antonella
SKENE, Tom	KUTA, Elizabeth	CENTRONE, Irma
SLOAN, Todd	LA ROSA, George	CHAMBERS, Sharon
SORA, David	LAMPKIN, Lorna	CHIASSON, Lucille
SOUZA, Maria	LANTHIER, Elise	CONROY, Nadene
SWEENEY, Yvonne	LATINCIC, Mary Ann	COOLMAN, Joyce
THEN, Milan	LAUZON, Diane	CORION, Margaret
THEIRIAULT, Kathleen	LEBLANC, Sharon	CORREIA, Jackie
THOMAS, Joanne	LEE, Allan	CORRIGAN, Francis
TONER, Donna	LEE, Barbara	CROSSLEY, Barbara
TONGER, Joy	LEE, Judith	CUMMINGS, Penny
WALCOTT, Margaret	LEGARDO, Lourdes	CUTLER, Jeffrey
WESTON, Elizabeth	LOGAN, Rosemary	DAYA, Nazih
WHEELER, Karen	LUCAS, Lourine	DEAR, Rosie
WORKU, Habte	LYNCH, Gwen	DEARDEN, Sylvia
WORTHINGTON, Barbara	MARKIEWICZ, Eva	DEODAT, Zalina
WYNDELS, Lisa	MARTIN, Christine	DRAWBELL, Steven
YOUNG, Pamela	MAY, Laurel	DUONG, Chinn
YUEN, Jacqueline	McCOLLIN, Phyllis	EVANS, Cathy
ZACKS, Michael	McLEOD, Maret	FARNCOMBE, Peter
	MENNIE, Florence	FENTON, Mary Jane
	MESLIN, Eleanor	FERNANDEZ, Sherry
	MILLS, Allan	FITZPATRICK, John

PLAINTES NE RELEVANT PAS DE LA COMPÉTENCE DE L'OMBUDSMAN POUR L'EXERCICE FINANCIER 1989/90 (SUITE)

Organisme	Renseignements fournis	Renseignements pris	Aide au règlement	Pas d'action possible	Total
Privés	409	196	55	27	687
Municipaux	200	126	44	12	382
Fédéraux	94	84	34	7	219
Tribunaux	80	15	3	2	100
Autres	34	41	16	15	106
Total non-provincial	817	462	152	63	1494
Grand total	2172	1906	783	287	5148

PLAINTES NE RELEVANT PAS DE LA COMPÉTENCE DE L'OMBUDSMAN DEMANDES DE RENSEIGNEMENTS / MÉMOIRES EXERCICE FINANCIER 1989/90 AVEC CHIFFRES COMPARATIFS

Organisme	Renseignements fournis	Renseignements/ Aide au règlement	Pas d'action possible	Total	Pourcentage					
Privés	9528	7156	4792	3405	648	469	14968	11030	56.8	51.3
Municipaux	1271	1458	325	302	45	36	1641	1796	6.2	8.3
Fédéraux	1402	1464	288	219	54	39	1744	1735	6.6	8.1
Tribunaux	547	454	32	17	36	32	615	510	2.4	2.4
Autres	1129	688	191	78	212	112	1532	878	5.8	4.1
Total	19014	16278	6193	4376	1150	831	26357	21487	100.0	100.0

DÉPENSES RÉELLES POUR L'EXERCICE FINANCIER 1989-1990

Salaires	4 878 600 \$	Autres services	171 000 \$
Avantages sociaux	900 500	Meubles et équipement de bureau	26 700
Déplacements et déménagements	162 700	Matériel informatique	106 400
Communications téléphoniques, expédition et livraison du courrier	263 500	Fournitures de bureau	88 600
Location des locaux	630 500	Livres et publications	37 900
Location de matériel et autre	107 800	Impression des rapports et procédures	35 500
Services professionnels	117 900	Autres fournitures et équipement	112 500
Services de sécurité	40 500		
Entretien du matériel informatique	56 300		
TOTAL 7 736 900 \$			

STATISTIQUES

PLAINTES NE RELEVANT PAS DE LA COMPÉTENCE DE L'OMBUDSMAN

POUR L'EXERCICE FINANCIER 1989/90

Organisme	Renseignements fournis	Renseignements pris	Aide au règlement	Pas d'action possible	Total
AGRICULTURE ET ALIMENTATION	13	8	4	4	29
PROCUREUR GÉNÉRAL	134	102	41	10	287
Commission des affaires municipales	5	3	2	2	12
Cureteur public	2	3	8	0	13
TOTAL PROCUREUR GÉNÉRAL	141	108	51	12	312
AFFAIRES CIVIQUES	0	3	0	1	4
Commission des droits de la personne	27	24	6	9	66
TOTAL AFFAIRES CIVIQUES	27	27	6	10	70
COLLÈGES ET UNIVERSITÉS	24	39	12	5	80
SERVICES SOCIAUX ET COMMUNAUTAIRES	115	133	56	20	324
Commission de révision de l'aide sociale	6	14	5	0	25
TOTAL SERVICES SOCIAUX ET COMMUNAUTAIRES	121	147	61	20	349
CONSUMMATION ET COMMERCE	38	45	33	13	129
SERVICES CORRECTIONNELS	26	16	7	0	49
Centres correctionnels	88	14	6	4	112
Centres de détention	142	23	11	10	186
Prisons	61	28	13	9	111
TOTAL SERVICES CORRECTIONNELS	317	81	37	23	458
CULTURE ET COMMUNICATIONS	1	2	1	0	4
EDUCATION	13	6	3	2	24
Régime de retraite des enseignants de l'Ontario catégorie B	5	2	1	2	10
TOTAL EDUCATION	18	8	4	4	34
ÉNERGIE	0	2	0	1	3
Hydro-Ontario	7	8	6	2	23
TOTAL ÉNERGIE	7	10	6	3	26
ENVIRONNEMENT	23	22	11	7	63
ÉTABLISSEMENTS FINANCIERS	15	17	3	0	35
SERVICES GOUVERNEMENTAUX	14	17	50	5	86
SANTÉ	23	16	2	5	46
Hôpitaux psychiatriques	36	19	2	7	64
Assurance-santé de l'Ontario	20	16	9	1	46
TOTAL SANTÉ	79	51	13	13	156
LOGEMENT	74	121	23	20	238
Société de logement de l'Ontario	1	3	0	2	6
TOTAL LOGEMENT	75	124	23	22	244
INDUSTRIE, COMMERCE ET TECHNOLOGIE	3	0	0	0	3
TRAVAIL	41	69	24	10	144
Commission des accidents du travail	180	479	211	22	892
TOTAL TRAVAIL	221	548	235	32	1036
AFFAIRES MUNICIPALES	11	11	3	4	29
Commission de retraite des employés municipaux	14	3	0	0	6
TOTAL AFFAIRES MUNICIPALES	14	14	3	4	35
RICHESSSES NATURELLES	34	25	6	25	90
DÉVELOPPEMENT DU NORD ET DES MINES	3	0	0	1	4
REVENU	25	26	13	3	67
FORMATION PROFESSIONNELLE	7	11	2	0	20
SOLICITEUR GÉNÉRAL	52	18	4	0	74
TOURISME ET LOISIRS	14	2	0	1	17
TRANSPORTS	33	78	44	11	166
TRÉSOR ET ÉCONOMIE	1	1	0	0	2
GOUVERNEMENT DE L'ONTARIO AUTRE	35	15	9	6	65
TOTAL GOUVERNEMENT DE L'ONTARIO	1355	1444	631	224	3654

1989-90 AVEC CHIFFRES COMPARATIFS

ABANDON		RETRAIT		ARTICLE 18		TOTAL	
1989/90	1988/89	1989/90	1988/89	1989/90	1988/89	1989/90	1988/89
3	5	3	7	10	14	18	32
7	6	5	5	35	22	91	59
0	0	1	3	10	22	22	25
0	0	1	3	5	5	132	106
2	3	1	7	32	7	6	7
2	3	9	7	10	7	28	46
4	5	6	3	6	7	29	26
6	13	4	5	30	24	84	86
0	2	1	1	5	12	17	45
6	15	6	6	35	36	101	131
7	2	7	6	19	23	64	117
12	8	4	2	27	50	64	86
43	66	35	33	388	288	535	434
173	127	94	53	656	613	1080	893
85	120	75	37	526	466	750	714
313	321	208	125	1597	1417	2429	2127
0	0	0	1	0	1	5	5
0	0	2	4	15	22	23	32
0	0	0	1	20	22	29	39
0	0	2	5	35	44	52	71
0	0	1	0	0	0	2	0
1	1	0	0	5	3	13	13
1	1	1	0	0	3	15	0
0	1	4	3	0	8	52	13
0	0	0	0	0	0	79	69
10	2	15	15	14	16	76	66
10	0	0	0	1	1	3	3
0	0	0	0	0	0	30	3
7	1	12	17	23	18	192	158
8	4	10	27	7	6	58	55
1	1	2	7	4	8	11	21
0	0	2	0	0	0	5	6
1	1	4	7	0	8	16	27
14	2	14	14	15	14	89	77
1	1	0	0	3	0	58	7
2	1	7	0	8	6	43	25
1	1	0	0	3	2	11	4
3	0	2	2	17	5	36	24
3	0	1	2	1	1	7	8
4	5	5	15	27	17	88	71
0	0	0	0	0	0	1	0
0	0	3	0	9	5	15	14
398	395	346	283	1962	1770	3819	3513

GLOSSAIRE

PLAINTE ETAYÉE PAR L'OMBUDSMAN

PAS DE RECOMMANDATION — Il arrive que l'ombudsman étaye une plainte mais décide qu'il n'est pas important, dans la circonstance, de faire une recommandation.

RECOMMANDATION OFFICIELLE ACCEPTÉE

Plainte ayant donné lieu à une recommandation de l'ombudsman que l'organisme gouvernemental accepte de mettre en oeuvre.

RECOMMANDATION OFFICIELLE REJETÉE

Plainte ayant donné lieu à une recommandation de l'ombudsman que l'organisme gouvernemental refuse de mettre en oeuvre.

AIDE AUX PLAIGNANTS

Plainte qui a donné lieu à une intervention de l'ombudsman et entraîne généralement des mesures correctives tangibles de la part de l'organisme gouvernemental.

RÈGLEMENT INDÉPENDANT

De nombreuses plaintes sont réglées indépendamment de l'intervention de l'ombudsman. Ceci peut se produire à n'importe quelle étape du processus d'enquête, avant la publication du rapport définitif de l'ombudsman.

BIEN-FONDE NON ÉTABLI

Plainte dont l'enquête de l'ombudsman n'a pas établi le bien-fondé.

ENQUÊTE INTERROMPUE

L'ombudsman peut user de sa discrétion pour interrompre une enquête, pour diverses raisons, à tout moment avant la publication du rapport final :

ABANDON

Les efforts pour communiquer avec le plaignant n'aboutissent pas (c'est le cas des plaintes en provenance de détenus des établissements correctionnels qui sont libérés en cours d'enquête et ne laissent pas d'adresse).

RETRAIT

À la demande du plaignant, il arrive souvent que des renseignements soient fournis aux plaignants et que ces derniers, même si la plainte n'est pas réglée, décident de ne pas poursuivre la cause.

ARTICLE 18

Se rapporte à l'article 18 de la Loi sur l'ombudsman qui habilite ce dernier à mettre fin à une enquête si, par exemple, il existe une solution parallèle adéquate ou si la plainte est frivole ou si, étant donné toutes les circonstances, il n'est pas nécessaire de poursuivre l'enquête.

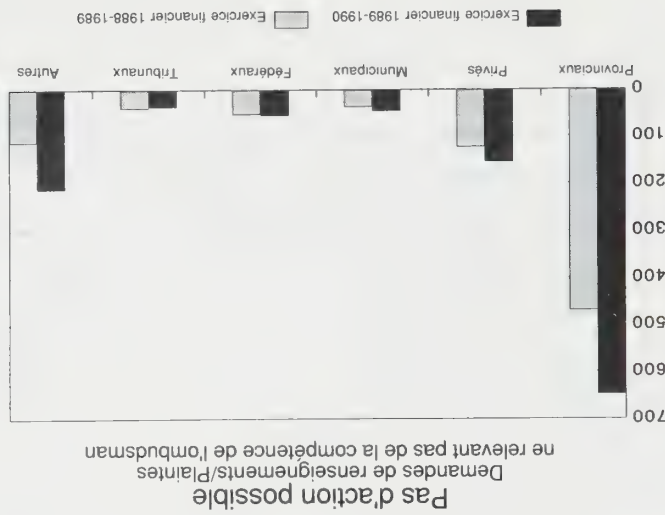
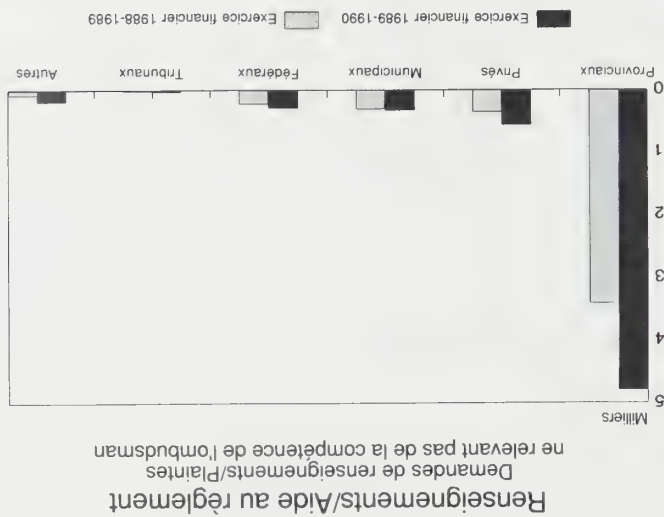
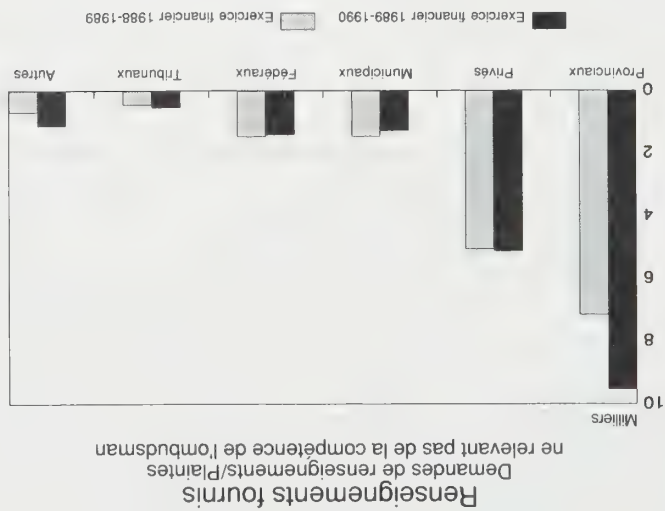
STATISTIQUES

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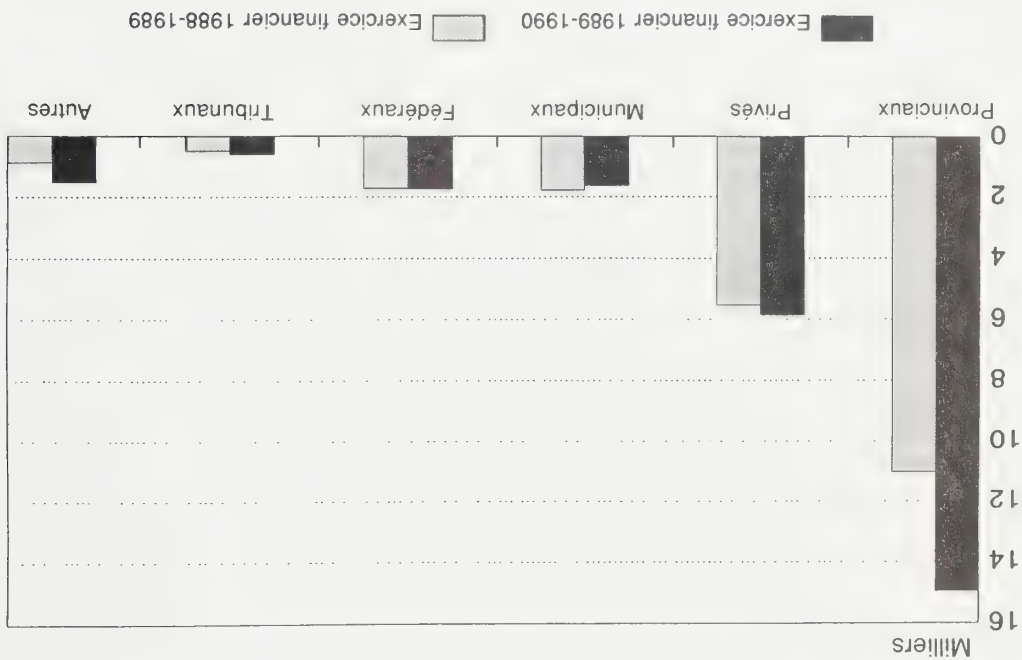
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STATISTIQUES

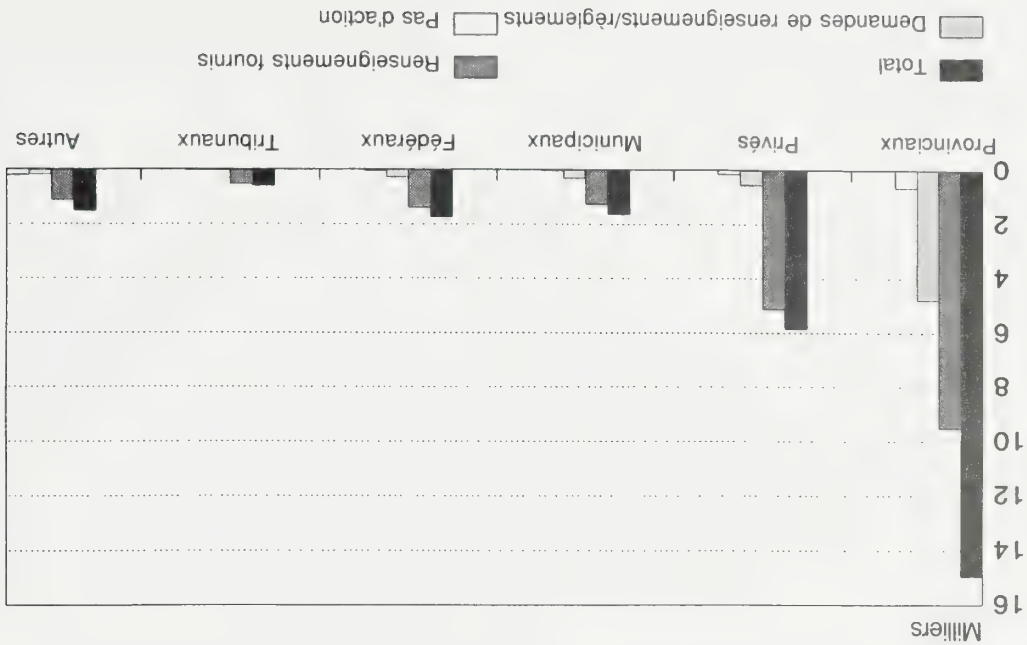


STATISTIQUES

Demandes de renseignements/Plaintes
ne relevant pas de la compétence de l'Ombudsman
Comparaison entre les exercices financiers



Demandes de renseignements/Plaintes
ne relevant pas de la compétence de l'Ombudsman
Distribution au cours de l'exercice financier 1989-1990



ANNEXES

pour excès de paiement de près de 2000 \$, ce qu'elle jugeait déraisonnable.

Après avoir reçu l'avis de l'ombudsman indiquant son intention de faire enquête, le ministère a fait savoir à sa cliente qu'il avait procédé à un examen de son dossier et conclu à un excès de paiement supplémentaire de plus de 2000 \$.

Un examen détaillé du dossier a révélé des problèmes de temps dans le traitement de l'information par le système du ministère et a indiqué que la cliente avait agi de bonne foi avec le ministère pendant toute la période où elle avait bénéficié des prestations.

Au cours de l'enquête de l'ombudsman, le ministère a retiré une partie de l'allégation d'excès de paiement avant de finir par renoncer à la somme tout entière.

RÉSUMÉ N° 32

L'intervention de l'ombudsman au nom d'un patient d'une unité de sécurité maximale d'un hôpital psychiatrique a aidé ce dernier à repartir à zéro.

Une représentante des patients s'est adressée à l'ombudsman en alléguant que la détention continue du patient dans un tel milieu n'était pas justifiée. Depuis l'âge de six ans, ce patient avait passé la majorité de sa vie dans des hôpitaux psychiatriques, sous divers diagnostics, et était décrit comme nécessitant un environnement structuré et sécurisé.

Dix mois après la lettre de l'ombudsman annonçant son intention de faire enquête, le patient du patient dans un milieu moins sécurisé dans un autre hôpital avait été accepté à condition qu'il fasse un séjour de transition dans une unité différente. Le patient était réticent. Il se voyait comme une personne fonctionnant à un niveau supérieur à celui de la plupart des autres

résidents de cette unité. Le transfert, qui fut tenté quasiment sans préavis ni préparation, fut un désastre. Lors de l'arrivée du plaignant, les autres patients s'étaient précipités vers lui et son escorte, ce qui l'avait tellement bouleversé qu'il avait refusé d'aller au-delà des portes de verre de l'entrée. Deux heures plus tard, il était de retour dans l'unité de sécurité maximale.

L'ombudsman a tiré plusieurs conclusions et fait plusieurs recommandations sur les procédures de transfert pour éviter qu'une telle situation ne se reproduise.

Cinq mois plus tard, le patient a été transféré dans un nouvel hôpital psychiatrique. Après six semaines, on a jugé qu'il n'existait pas de motifs suffisants pour renouveler son statut de patient involontaire et le patient a décidé de quitter l'hôpital.

Cet homme, qui a maintenant trente et un ans, vit au sein de la collectivité depuis bientôt deux ans.

L'hôpital ayant accepté nos recommandations sur les procédures de transfert et le passage dans la collectivité, le dossier a été classé.

L'ombudsman ayant informé la Commission de son intention de faire enquête sur cette cause, cette dernière a répondu qu'elle allait procéder à un nouvel examen de la demande d'aide intermédiaire. Peu de temps après, la Commission a fait savoir à l'ombudsman que le refus initial avait été basé sur des renseignements financiers non fondés qu'elle avait pris à tort pour des renseignements fiables. La Commission a renversé sa décision et ordonné qu'une aide intermédiaire soit versée depuis la date d'annulation des prestations jusqu'à la date de la décision de l'appel en cours.

Une ancienne bénéficiaire des prestations familiales a demandé à l'ombudsman de l'aider à traiter avec le service central de recouvrement du ministère des Services gouvernementaux qui cherchait à recouvrer un excès de paiement de prestations familiales qui lui avait été consenti plusieurs années auparavant par le ministère des Services sociaux et communautaires. Apparemment, elle avait chargé une amie de payer la dette lorsqu'elle avait quitté le pays à la recherche d'un emploi. Cependant, pendant son absence, le ministère des Services sociaux et communautaires avait découvert un nouvel excès de paiement et envoyé des avis à ce sujet à une ancienne adresse. En conséquence, lorsqu'elle était revenue au Canada, elle avait dû faire face à des avis de recouvrement et elle ne savait pas si elle devait effectivement de l'argent. Bien qu'elle ait envoyé un paiement de 500 \$ au service de recouvrement central, l'organisme gouvernemental continuait à lui envoyer des avis officiels de recouvrement sans apparemment tenir compte des explications et des questions qu'elle contenait ses lettres.

L'ombudsman a organisé une rencontre entre cette personne et un responsable chargé du recouvrement des prestations familiales. Par la suite, le ministère des Services sociaux et communautaires a accepté de fixer des conditions de rembourquement plus acceptables et de renoncer à continuer à imposer des intérêts sur le compte. En outre, le ministère a accepté de porter dans sa totalité le paiement intermédiaire de 500 \$ effectué par la plaignante au crédit du principal.

Une bénéficiaire des prestations familiales avait été informée officiellement par un travailleur social qu'elle avait été jugée comme ayant fait l'objet d'un excès de paiement. Elle avait reçu par la suite un avis officiel du ministère

Suite à l'intervention de l'ombudsman, le ministère du Travail a procédé à un examen du Bureau des conseillers des travailleurs de l'Ontario et un certain nombre de recommandations ont été faites pour améliorer les opérations. Ces recommandations sont actuellement mises en oeuvre et l'ombudsman continue à suivre les progrès.

RÉSUMÉ N° 28

Lorsque les circonstances l'exigent, l'ombudsman peut agir immédiatement pour régler officieusement un état d'urgence.

Treize familles qui habitaient sur la propriété d'une compagnie minière dans le Nord de l'Ontario étaient préoccupées par le fait qu'Hydro-Ontario allait cesser d'alimenter dans les vingt-quatre heures la pompe électrique de la mine qui les approvisionnait en eau parce que la compagnie n'avait pas payé sa facture d'électricité. Les familles avaient elles-mêmes payé leur loyer et leurs factures d'électricité. Il n'y avait aucun moyen de contacter les propriétaires absents de la mine. La température locale était de -35° lorsque des représentants des résidents s'étaient adressés à l'ombudsman. Ils craignaient non seulement de se retrouver malheureux et sans eau pendant la période de Noël mais également que cela cause des dommages considérables aux tuyaux d'eau et à l'équipement. L'ombudsman est intervenu et des représentants d'Hydro-Ontario ont pris contact avec les représentants des familles pour leur demander de les aider à découvrir quelles étaient les lignes qui alimentaient les pompes à eau des familles. Hydro-Ontario a décidé qu'aucun des services ne serait coupé.

L'enquête de l'ombudsman a eu pour effet d'amener le ministère des Services sociaux et communautaires à examiner de près les préoccupations individuelles dans le cadre de trois causes en rapport avec les prestations familiales.

Un ancien bénéficiaire des prestations familiales alléguait que la décision de la Commission de révision de l'aide sociale de lui refuser une aide financière intermédiaire était déraisonnable.

RÉSUMÉ N° 25

L'intervention de l'ombudsman a eu pour effet d'amener un organisme gouvernemental à reconsidérer une décision parce que toutes les preuves n'avaient pas été prises en considération.

Une bénéficiaire de l'aide sociale avait fait une demande de prestations aux termes de la *Loi sur les prestations familiales* à titre de personne incapable au travail de façon permanente. Sa demande était accompagnée d'une description de ses antécédents médicaux. Elle soutenait qu'en rejetant sa demande, le ministre des Services sociaux et communautaires semblait avoir ignoré certaines des preuves médicales.

Après enquête, l'ombudsman a conclu que le Conseil médical consultatif avait soumis son rapport au directeur du Maintien du revenu sans examiner toutes les preuves disponibles. En outre, l'ombudsman a recommandé que des améliorations soient apportées à la formation et aux conseils dispensés aux évaluateurs médicaux.

L'ombudsman a également conclu que le directeur du Maintien du revenu avait omis de fournir tous les renseignements médicaux pertinents sur la plaignante dans son rapport à la Commission de révision de l'aide sociale.

Le ministre a accepté de mettre en oeuvre les recommandations de l'ombudsman et a accordé à la plaignante une allocation avec effet rétroactif sur la base de sa demande initiale.

RÉSUMÉ N° 26

L'ombudsman peut utiliser son pouvoir d'examen sous serment lorsque cela s'avère nécessaire pour décider de la crédibilité des témoins.

Une personne s'est plainte à l'ombudsman que les actions du personnel du ministère des Services gouvernementaux dans le but de recouvrer un prêt avaient été inappropriées, non professionnelles et intimidantes. À cause des différences fondamentales entre la version des événements de la plaignante et celle de l'agent de recouvrement, les participants principaux à la plainte ont été examinés sous serment, procédure prévue à l'article 20 de la *Loi sur l'ombudsman*.

RÉSUMÉ N° 27

Si l'ombudsman découvre que les plaintes relatives à un organisme gouvernemental particulier suivent une certaine tendance, il (elle) peut procéder à une enquête systématique.

Le ministre a accepté les recommandations de l'ombudsman : l'employé s'est excusé par écrit auprès de la débitrice, le ministre a commencé à fournir une formation plus poussée au personnel dans le secteur des renseignements personnels, de l'accès à l'information et autres textes de loi; et le ministre a commencé à offrir une série d'ateliers sur les services aux clients pour mieux sensibiliser le personnel à la nécessité de faire preuve de tact et de compréhension lorsque l'on communique avec les membres du public.

L'ombudsman a découvert que l'agent de recouvrement avait révélé la situation financière de la débitrice à une autre personne qui avait répondu au téléphone.

L'enquête a révélé que le ministre avait contrevenu à la *Loi sur les agences de recouvrement* en omettant d'écrire à la débitrice à son adresse actuelle avant de lui téléphoner. De même, au cours d'un appel téléphonique, l'employé du ministre avait demandé pour la forme à la débitrice où elle habitait. Lorsqu'elle avait refusé de lui répondre, il avait réité son adresse, la laissant dans l'apprehension.

Or, dans l'un des bureaux des CTO en cause, il s'écoulait un délai de vingt-six mois entre le moment où les travailleurs se présentaient au bureau et le moment où un conseiller était disponible. La longueur de l'attente à l'autre bureau régional était de quatorze mois. L'enquête de l'ombudsman sur les CTO a révélé que le délai moyen dans les douze bureaux de l'Ontario était d'environ dix-huit mois. La direction des CTO a fait valoir que la charge de travail était écrasante et que les cas continuaient à arriver à un taux qui dépassait les projections du gouvernement.

RÉSUMÉ N° 24

Une enquête indépendante de l'ombudsman peut mettre à jour des informations qui permettent au ministère de modifier sa décision.

Les résidents d'une collectivité du Nord de l'Ontario avaient subi des dommages matériels substantiels à la suite d'une remontée des eaux usées d'un système d'égouts exploité par le ministère de l'Environnement. Leurs demandes de dommages et intérêts avaient été soumises au ministère qui, après avoir procédé à une enquête interne, les avait soumises aux assureurs. Les assureurs avaient rejeté les demandes sous prétexte qu'il n'y avait pas de preuve de négligence de la part du ministère. Les assureurs estimaient que les dommages étaient dus à l'inondation provoquée par de graves intempéries, lesquelles n'étaient pas couvertes par l'assurance.

L'enquête de l'ombudsman a entraîné un examen détaillé de la situation le jour de l'inondation et un examen de l'opération du système d'égouts. L'ombudsman a identifié plusieurs facteurs sur lesquels baser la conclusion que la décision de refuser une indemnisation aux plaignants était déraisonnable, même si le ministère n'avait pas fait preuve de négligence dans son exploitation du système. Il y avait des preuves, par exemple, qu'il était possible que le système soit tombé en panne par suite d'une faute de conception ou parce que les commandes n'avaient pas été réglées correctement.

Le ministère a procédé à un nouvel examen de l'affaire avec ses assureurs qui continuaient à rejeter la demande. Le ministère a déclaré à l'ombudsman qu'il n'avait pas le choix mais devait accepter la décision des assureurs. Après enquête supplémentaire et recherches juridiques qui ont mis à jour les résultats d'un procès récent, l'ombudsman a donné de nouvelles raisons au ministère pour offrir une indemnisation aux résidents. Après discussion avec le ministère, les assureurs ont décidé de verser l'argent demandé.

RÉSUMÉ N° 22

L'intervention de l'ombudsman a entraîné la modification d'une formule gouvernementale dans laquelle les personnes déficientes mentales étaient victimes d'une classification injuste.

Une personne déficiente mentale s'est plainte à l'ombudsman en alléguant qu'il était injuste et déraisonnable que le ministère des Transports classe la désignation « déficience mentale » dans la catégorie des troubles psychiatriques dans la formule où figure le rapport de l'examen médical aux fins de permis de conduire. L'ombudsman a demandé l'avis d'un psychiatre indépendant connu pour son travail auprès des personnes déficientes mentales, lequel a été communiqué au ministère avec la recommandation qu'il envisage de retirer la désignation « déficience mentale » de la catégorie des troubles psychiatriques.

Le ministère a accepté et la nouvelle formule utilisée classe la « déficience mentale » dans la catégorie neurologique.

L'intervention de l'ombudsman a eu pour effet d'amener un établissement correctionnel à renforcer ses politiques pour assurer la sécurité des détenus.

Un détenu s'est plaint à l'ombudsman qu'il avait été agressé par un autre détenu parce qu'une porte qui donnait sur les quartiers d'habitation avait été laissée entrouverte. L'enquête de l'ombudsman a confirmé les préoccupations du détenu.

En conséquence, le surintendant a fait circuler une note de service parmi le personnel pour rappeler à tout le monde qu'il était important de respecter les règles de sécurité pour assurer la sécurité de tous les détenus.

Le ministre s'est excusé auprès de la plaignante et a également fait savoir qu'il mettait au point des méthodes de vérification interne pour veiller à ce que les allocations aux étudiants soient versées sans délai.

RÉSUMÉ N° 21

L'intervention de l'ombudsman a eu pour effet d'amener un ministre à s'excuser pour la façon dont il avait traité un ancien patient.

Un patient avait été admis dans un hôpital psychiatrique provincial où des médicaments lui avaient été administrés par injection pour calmer son agitation. Le jour suivant, le médecin avait ordonné que le médicament lui soit administré quatre fois par jour par voie orale, ou par injection en cas de refus de sa part. Le jour suivant, le patient avait refusé ses pilules à deux reprises et, contre sa volonté, avait reçu des injections intramusculaires.

Ayant cherché sans succès pendant plusieurs années à obtenir réparation pour les torts qu'il estimait avoir subis, cet homme a demandé à l'ombudsman de l'aider à résoudre son problème.

L'enquête de l'ombudsman a révélé que les articles de la *Loi sur la santé mentale* prévoyaient qu'un traitement psychiatrique, y compris l'administration de médicaments, ne doit pas être administré sans le consentement du patient et que l'administration involontaire de médicaments est autorisée si une contrainte chimique est rendue nécessaire par l'état mental et physique du patient.

L'examen des dossiers de l'hôpital auquel a procédé l'ombudsman n'a fourni aucune indication que l'état physique et mental du patient le troisième jour après son entrée à l'hôpital, lorsqu'il a refusé les pilules, nécessitait une contrainte chimique. L'ombudsman a conclu que les actions du personnel hospitalier qui avait prescrit et administré des médicaments sous forme de contrainte, alors que le patient refusait son consentement, étaient contraires aux dispositions de la loi.

À cause du temps écoulé depuis l'incident initial, l'ombudsman a estimé que la seule recommandation appropriée était que le ministre s'excuse auprès de l'ex-patient. Le ministre de la Santé s'est excusé pour toute détresse causée au plaignant par l'administration inappropriée d'un traitement psychiatrique.

RÉSUMÉ N° 19

L'intervention de l'ombudsman a eu pour effet de modifier le dossier d'un détenu, ce qui a donné lieu à une nouvelle audience de libération conditionnelle.

Un détenu d'un établissement correctionnel s'est plaint à l'ombudsman du fait que la Commission ontarienne des libérations conditionnelles ne lui avait pas accordé de libération conditionnelle par suite d'une grave erreur dans son rapport de classification.

L'enquête de l'ombudsman, qui a inclus un examen du rapport de classification et des entrevues avec le personnel du ministre, a permis de conclure qu'il n'y avait aucune raison d'inclure certains renseignements dans le rapport de classification.

En conséquence, le ministre a supprimé ces commentaires du rapport de classification et a fait parvenir une lettre d'explication à la Commission ontarienne des libérations conditionnelles. Sur la base de ces nouveaux renseignements, la Commission a accordé une nouvelle audience au détenu.

L'intervention de l'ombudsman en réponse aux préoccupations d'une étudiante qui se plaignait des délais et du manque de courtoisie dont elle avait été victime a permis d'améliorer les méthodes de traitement des prêts aux étudiants.

Une étudiante, qui avait fait une demande de prêt au Régime de prêts aux étudiants de l'Ontario, s'est plainte à l'ombudsman du fait qu'elle avait du attendre longtemps avant de recevoir son prêt et qu'elle n'avait pas été traitée avec efficacité et courtoisie lorsqu'elle avait téléphoné au ministre des Collèges et Universités. Elle voulait que le ministre réexamine ses façons de procéder et ses méthodes de communication dans les bureaux des services financiers pour éviter ce type de problème à l'avenir.

Le ministre a répondu à l'avis d'intention de faire enquête de l'ombudsman en procédant lui-même à une enquête sur les préoccupations de la plaignante. L'examen du ministre a corroboré un grand nombre des données de la plainte.

avait appris que les entrevues avaient eu lieu. Surpris de ne pas avoir été interviewé, il avait pris contact avec le directeur en charge du poste et s'était rendu compte que ce dernier n'avait jamais vu sa demande.

On avait fini par trouver la demande de l'employé. Mais le poste avait alors déjà été offert à un autre candidat et le ministère ne souhaitait pas rouvrir le concours. Le ministère s'était excusé mais l'employé estimait que cela ne constituait pas une réponse adéquate.

Bien que le ministère ait accepté de prendre des mesures pour améliorer sa façon de procéder, l'ombudsman a estimé que la décision du ministère de ne pas rouvrir le concours et de ne pas examiner la demande de l'employé était injuste et elle a recommandé que l'employé reçoive un paiement approprié pour le dédommager d'avoir perdu une occasion de promotion. Le ministère a accepté et la cause a été réglée.

RÉSUMÉ N° 17

L'ombudsman a aidé à obtenir une pension d'invalidité pour une fonctionnaire à la retraite qui ne recevait aucune prestation de pension.

Une ancienne employée du gouvernement a demandé l'aide de l'ombudsman relativement aux difficultés qu'elle avait avec sa pension. Bien que l'employée ait travaillé pour le gouvernement provincial, avec des arrêts, pendant plus de vingt-cinq ans, elle n'avait pas accumulé les dix années obligatoires pour lui donner droit à une pension. Elle estimait qu'étant donné sa situation exceptionnelle, la Commission du régime de retraite des fonctionnaires agissait de façon déraisonnable en lui refusant une pension. Elle avait commencé à travailler pour le gouvernement en 1956 mais n'avait pas été en mesure de contribuer à la Caisse de retraite des fonctionnaires du fait de sa situation d'employée temporaire. Elle était devenue employée permanente en 1963 et avait commencé à contribuer au régime de pension à cette époque. En 1972, elle avait démissionné de son emploi auprès du gouvernement, à cause de circonstances atténuantes, deux jours avant que la période de dix ans ne se soit écoulée. La Caisse de retraite des fonctionnaires lui avait remboursé ses contributions.

L'ombudsman a aidé un chauffeur de camion professionnel à obtenir une indemnisation pour la perte de salaire causée par les retards de la procédure d'octroi de permis de la province.

RÉSUMÉ N° 18

L'ombudsman estimait que, l'employée retraitée ayant obtenu un remboursement de ses contributions en 1972, elle n'était malheureusement pas admissible à une pension. Il a cependant été décidé que, comme elle était en mauvaise santé et incapable de travailler, elle était admissible à une pension d'invalidité de la Commission du régime de retraite des fonctionnaires pour ses services à l'Assemblée législative. Les renseignements pris par la suite par l'ombudsman ont permis de vérifier qu'elle recevait effectivement cette pension.

Un chauffeur de camion soutenait que le ministère des Transports lui devait une indemnisation pour la perte de salaire qu'il avait subie par suite du temps qu'avait mis le ministère à traiter sa demande de renouvellement de permis de conduire un camion. Le chauffeur avait rempli toutes les conditions et s'était soumis à tous les examens médicaux et visuels nécessaires dans les délais appropriés. Il s'était cependant écoulé huit mois avant qu'il reçoive un permis de conduire AC permanent. Pendant ce délai de huit mois, il avait dû renouveler son permis temporaire trois fois. Chaque fois, cela avait entraîné une perte de travail et de gains. L'ombudsman a pris contact avec le ministère pour discuter des préoccupations du chauffeur. Après examen de l'affaire, le ministère a conclu qu'il avait fait erreur en ne traitant pas la demande dans les délais prévus. En conséquence, il a fait parvenir un chèque de 135,81 \$ au chauffeur de camion, en compensation de ses pertes de gains. Le sous-ministre s'est également excusé pour les désagréments que cette affaire avait causés.

une station de pêche très fréquentée. Les permis de pêche étaient vendus dans le parc depuis quatorze ans.

Le ministère des Richesses naturelles avait refusé leur demande sous prétexte que le propriétaire précédent n'avait pas vendu beaucoup de permis, qu'il y avait déjà beaucoup d'endroits dans la région où l'on délivrait des permis et que le lieu où opérait le couple n'était pas facilement accessible au public.

L'enquête de l'ombudsman a confirmé qu'un permis avait été octroyé au propriétaire précédent et que la situation n'avait pas changé de façon substantielle lorsque le parc avait changé de main.

L'ombudsman a jugé que le ministère avait manqué de cohérence et a recommandé que le couple reçoive le droit de délivrer des permis. Le ministère a accepté la recommandation.

RÉSUMÉ N° 14 et 15

L'ombudsman a fait remarquer à un ministre que sa politique sur une question particulière n'est pas en accord avec celle des autres ministères sur la même question.

Un employé provincial avait choisi de mettre fin à son emploi aux termes du Programme de retraite anticipée volontaire et avait informé le ministère de la Consommation et du Commerce de son intention bien à l'avance. Ses services s'étaient terminés le 31 octobre 1988 et il n'avait reçu la somme forfaitaire qui lui était due à titre d'indemnité de cessation d'emploi que le 20 décembre 1988. Le ministère avait rejeté sa demande de paiement d'intérêts pour la période du 31 octobre au 20 décembre 1988.

L'ombudsman a informé le ministère de la Consommation et du Commerce que la politique des autres ministères est de verser des intérêts lorsque le paiement de la somme forfaitaire est indûment retardé.

Le ministère a accepté de verser des intérêts à son ancien employé pour la période du 1^{er} au 20 décembre 1988.

Un employé avait donné à son ministère un préavis de trois mois de son intention de prendre sa retraite. Après qu'il eût pris sa retraite à la

date fixée, il y avait eu plusieurs retards qu'il estimait injustifiés dans les paiements qui lui étaient dus. Comme il avait fourni un préavis de son intention de prendre sa retraite, il avait jugé que ces retards de paiement étaient déraisonnables et avait demandé que des intérêts lui soient versés. Après avoir examiné sa demande, son ancien ministère et le ministère des Services gouvernementaux, qui était responsable de ses paiements de retraite mensuels, avaient déclaré qu'aucun intérêt ne serait ajouté à l'argent qui lui était versé.

Dans le cadre de l'enquête de l'ombudsman, les façons de procéder des deux ministères dans des cas semblables ont été examinées avec les responsables du gouvernement. Compte tenu des jours ouvrables plutôt que du calendrier civil et du temps nécessaire à Poste Canada, les retards étaient relativement mineurs.

À l'époque où cette personne avait pris sa retraite, le ministère se fixait une cible artificielle de quatre-vingt-dix jours pour mener à bien les procédures nécessaires; cependant, au moment de l'enquête, le ministère cherchait à adopter un délai d'exécution de trente jours. Il n'y avait pas de politique ministérielle sur la période de traitement du paiement des employés ni sur les intérêts à payer.

Étant donné que le ministère était en train d'adopter un délai d'exécution de trente jours, l'ombudsman a demandé un réexamen de la situation. Suite au réexamen du ministère, l'ombudsman a été informé que l'ancien employé avait reçu des intérêts de 12 % sur le retard au-delà de 30 jours.

RÉSUMÉ N° 16

L'ombudsman a aidé un employé du gouvernement à obtenir une indemnisation pour avoir perdu une occasion de promotion parce que le ministère avait égaré sa demande et n'avait pas remédié à la situation.

Un employé du ministère du Logement avait remis en personne sa demande d'emploi à un poste qui constituait pour lui une promotion à la Direction des ressources humaines du ministère le dernier jour où, d'après ce qu'on lui avait dit, les demandes étaient acceptées. Il avait reçu par la suite une lettre standard l'informant que ses qualifications seraient examinées en fonction des exigences du poste. Deux semaines plus tard, il

RÉSUMÉ N° 9

L'intervention de l'ombudsman peut avoir pour effet d'amener un organisme gouvernemental à effectuer les changements de politique nécessaires.

Un détenu s'est plaint à l'ombudsman qu'il avait été extrait de sa cellule sans qu'on lui ait donné la chance de rassembler ses effets personnels avant d'être transféré dans un autre établissement. Par la suite, ses effets avaient été perdus, volés ou égarés.

L'établissement a accepté la conclusion de l'ombudsman selon laquelle le personnel aurait dû mettre les effets personnels du détenu en lieu sûr si ce dernier n'était pas en mesure de le faire. Le détenu a été remboursé pour la perte de ses effets personnels et le ministère a institué une politique aux termes de laquelle le personnel du ministère est maintenant chargé de mettre en sécurité tout bien laissé dans une cellule ou dans une unité par les détenus lorsque ceux-ci ne sont pas en mesure de le faire.

RÉSUMÉ N° 10 et 11

L'intervention de l'ombudsman peut encourager un organisme gouvernemental à améliorer ses communications avec le public.

Une personne s'est adressée à l'ombudsman après que son salaire eût été saisi sans préavis par le Bureau de l'exécution d'ordonnances alimentaires et de garde d'enfants. L'ombudsman a recommandé qu'une lettre d'avertissement soit envoyée pour chaque incident indépendant de non-paiement, et le Bureau d'exécution d'ordonnances alimentaires et de garde d'enfants a accepté.

Dans une autre cause, une bénéficiaire de pension alimentaire avait saisi l'ombudsman d'un certain nombre de plaintes relatives à la non-exécution de son ordonnance alimentaire. Elle avait l'impression que le Bureau d'exécution d'ordonnances alimentaires et de garde d'enfants avait négocié avec le débiteur un calendrier de paiements qui était contraire à la Loi sur l'exécution d'ordonnances alimentaires et de garde d'enfants. L'enquête de l'ombudsman n'a pas permis de confirmer ces allégations. Cependant, l'ombudsman a recommandé au Bureau d'exécution d'ordonnances alimentaires et de garde d'enfants d'acheter un parc à caravanes qui se trouvait être

RÉSUMÉ N° 12

L'ombudsman a réuni des représentants des gouvernements provincial et fédéral pour régler des problèmes qui touchaient un groupe de gens important.

Cent deux producteurs de tabac jaune qui avaient abandonné l'industrie déclinante de la culture du tabac en 1987 ont découvert qu'ils avaient reçu une aide financière très inférieure à celle des agriculteurs qui avaient abandonné l'industrie en 1988, aux termes du programme fédéral/provincial de partage des coûts intitulé Programme d'aide aux producteurs de tabac. Les conditions du programme, qui a pour but d'encourager les agriculteurs à cesser la production du tabac, ont été modifiées en 1988. Ceux qui ont cessé en 1987 estimaient que c'était injuste. Ils ont formé un comité et, lorsque leur demande d'indemnisation égale a été refusée, ils se sont adressés à l'ombudsman.

L'ombudsman a accepté de faire enquête. Par la suite, des représentants du ministère de l'Agriculture et de l'Alimentation se sont joints à des représentants du gouvernement fédéral et de la Commission de commercialisation des producteurs de tabac jaune pour renégocier les indemnités de cessation de production de 1987. Les négociations ont réussi et les agriculteurs ont maintenant reçu une indemnisation à effet rétroactif.

RÉSUMÉ N° 13

Lorsque l'enquête de l'ombudsman a révélé que certaines pratiques d'un ministère manquaient de cohérence, l'ombudsman a fait des recommandations que le ministère a accepté.

Un couple marié avait demandé au ministère des Richesses naturelles la permission de délivrer des permis de chasse et de pêche. Le couple avait

garde d'enfants d'améliorer ses relations avec les participants au programme. Le Bureau a pris un certain nombre d'initiatives dans le but d'améliorer les communications, y compris la distribution de nouvelles brochures, d'accusés de réception et de formulaires visant à améliorer les communications avec les participants au programme.

RÉSUMÉ N° 8

L'intervention de l'ombudsman peut avoir pour effet d'amener un organisme gouvernemental à reconsidérer une décision.

Un travailleur avait subi un accident de travail en 1979 et souffrait depuis cette époque de troubles dans le bas du dos et dans la jambe. Il souffrait en même temps d'un état pathologique non indemnisable au même endroit.

Deux spécialistes en orthopédie avaient jugé qu'il avait été mis en état d'invalidité par ses blessures indemnissables. Deux neurologues avaient noté l'état indemnisable ainsi que l'état non indemnisable du travailleur. L'un avait suggéré que l'état indemnisable était compliqué par l'état non indemnisable mais aucun des deux n'avait suggéré que l'état non indemnisable était le problème le plus important.

Le tribunal avait interprété les opinions des deux neurologues comme indiquant que l'accident du travailleur ne contribuait plus de façon notable à son invalidité et avait jugé qu'il n'était plus admissible à des indemnités. L'ombudsman a conclu, cependant, que le tribunal avait mal interprété les preuves des neurologues et, de plus, n'avait pas tenu compte des preuves des orthopédistes.

L'ombudsman a jugé que les critères utilisés par le tribunal pour déterminer si une cause doit faire l'objet d'un réexamen étaient présents en ce sens que les circonstances étaient exceptionnelles et qu'il existait des motifs suffisamment puissants pour amener un observateur objectif qui connaît la cause à juger qu'un réexamen avait des chances d'aboutir à un résultat différent. L'ombudsman a recommandé que le tribunal nomme un comité pour réexaminer sa décision.

Le tribunal a accepté d'envoyer les documents à un comité chargé de déterminer si un réexamen était recommandé. Ce comité a décidé qu'il devrait y avoir réexamen.

opinions subjectives des membres du jury ne devraient pas entrer en jeu pour exclure des candidats du processus de recrutement, ni être communiquées à une autre personne, car ceci pourrait compromettre l'impartialité des futures évaluations des candidats; il faudrait garder en dossier une documentation complète sur les critères de sélection et le processus de tri des demandes; et les membres des jurys de sélection devraient recevoir une formation dans le domaine des politiques et procédures relatives à la dotation en personnel.

L'ombudsman n'a cependant pas pu appuyer l'argument du plaignant comme quoi il aurait dû être nommé à l'un des postes disponibles.

Le ministre a mené sa propre enquête et a reconnu, comme l'avait découvert l'ombudsman, que les concours avaient été entachés de fautes de procédure. Il a accepté d'être plus vigilant à l'avenir et de veiller à ce que ses pratiques de recrutement et de dotation en personnel offrent à tous les candidats une chance de compétition égale.

RÉSUMÉ N° 7

Les enquêtes de l'ombudsman peuvent permettre de conclure que les actions des responsables gouvernementaux étaient raisonnables.

Un investisseur avait fait acheter 4300 actions privilégiées par son courtier en valeurs mobilières un jour où elles étaient négociées sans dividendes. Il prétendait que son courtier avait bénéficié des derniers dividendes déclarés.

L'investisseur est venu trouver l'ombudsman pour se plaindre du fait que la Commission des valeurs mobilières de l'Ontario avait endossé la décision de la Bourse de Toronto sur sa plainte sans en examiner le bien-fondé.

Après enquête, l'ombudsman a conclu que la Commission avait procédé à un examen indépendant des faits et des conclusions de la Bourse sur l'affaire, laquelle a jugé qu'un courtier d'escompte exécuté les ordres au nom du client mais, à la différence des courtiers qui offrent un service complet, ne conseille pas les clients sur les conditions du marché.

L'ombudsman n'a pas appuyé la plainte.

Cependant, l'ombudsman a jugé qu'aux termes de la loi, une indemnisation devait être payée à moins que l'évaluateur n'ait la preuve que la perte n'était pas due à l'attaque de prédateurs. Comme l'évaluateur n'avait pas trouvé de preuve comme quoi il n'y avait pas eu attaque de prédateurs, l'indemnité aurait dû être payée.

Le ministère a réexaminé son interprétation de la loi et a accepté de payer une indemnisation.

RÉSUMÉ N° 4

L'intervention de l'ombudsman peut permettre de trouver de nouvelles solutions qui serviront de base au règlement négocié du conflit.

Le propriétaire d'un chalet au bord d'un lac a fait part à l'ombudsman des préoccupations que lui causait le ministère des Richesses naturelles qui avait vendu deux parcelles non aménagées à l'ouest de son chalet au camp d'équipement des touristes situé immédiatement à l'est. Il craignait que le calme de son chalet soit perturbé par le camp. Il se plaignait que le ministère ait accepté de vendre les parcelles de la Couronne à une entreprise commerciale et pas à lui. Il avait acheté son chalet lorsqu'il était devenu évident que les parcelles de la Couronne en question ne pouvaient pas être achetées aux termes de la politique qui existait à l'époque.

L'ombudsman a suggéré un certain nombre de solutions de rechange qui ont fini par aboutir à un triple échange de propriétés. Le propriétaire du chalet a cédé sa propriété à la Couronne et a reçu une autre parcelle de la Couronne au bord du lac en échange. La parcelle du propriétaire du chalet a ensuite été vendue par la Couronne au propriétaire du camp qui s'est également déclaré satisfait de cette décision. Le ministère a reçu un paiement pour la parcelle de la Couronne qu'il avait cédé au propriétaire du chalet.

RÉSUMÉ N° 5

L'ombudsman peut intervenir en indiquant à une personne où s'adresser.

L'ombudsman a été invité à intervenir dans une cause touchant le Bureau du registraire général.

Aux termes de la *Loi de 1986 sur le changement de nom*, une personne qui a des raisons de croire qu'un changement de nom a été obtenu de façon frauduleuse peut s'adresser aux tribunaux pour demander une ordonnance révoquant ledit changement de nom. Dans cette cause, un homme soutenait que son ex-conjointe avait réussi à changer le nom de famille de leur enfant sur la base de renseignements frauduleux. L'homme demandait que le Bureau du registraire général dépose une demande de révocation du changement de nom.

Bien que le Bureau du registraire général ne se soit pas opposé à ce que l'affaire soit portée devant les tribunaux, il estimait que ce n'était pas à lui de déposer la demande.

Comme la personne qui avait besoin d'aide n'avait pas les ressources financières nécessaires pour déposer la demande elle-même, l'ombudsman a suggéré qu'elle s'adresse au bureau d'aide juridique. Avec l'aide de ce bureau, le plaignant a déposé sa demande et a obtenu une révocation du changement de nom de son enfant.

RÉSUMÉ N° 6

L'intervention de l'ombudsman peut améliorer la qualité de l'administration même s'il n'appuie pas la plainte dont il (elle) est saisie.

Un ingénieur avait déposé une demande d'emploi à un poste professionnel au ministère des Transports. Il avait subi une entrevue et était arrivé troisième à un concours de recrutement mais aucun des postes disponibles ne lui avait été offert. Un second concours de recrutement avait été combiné par la suite au premier. Bien qu'il ait déposé une nouvelle demande, il n'avait pas été invité à une entrevue dans le cadre du deuxième concours. Il soutenait que cela était injuste et que le ministère aurait dû retenir sa candidature au deuxième poste.

L'enquête de l'ombudsman a révélé un certain nombre d'irrégularités, d'omissions et d'injustices dans le processus de concours du ministère. L'ombudsman a recommandé un certain nombre d'améliorations qui comprenaient ce qui suit : les concours ne devraient être combinés qu'à la justice du processus peut être garantie; il faudrait procéder à une évaluation adéquate des exigences du poste avant l'étape des entrevues pour que les critères de sélection soient choisis de façon à refléter correctement leur importance; les

2^e PARTIE

Cette partie contient un certain nombre de résumés de causes qui illustrent la variété des plaintes dont l'ombudsman est saisi(e).

RÉSUMÉ N° 1

L'intervention de l'ombudsman peut avoir pour effet d'amener une cause au niveau nécessaire pour faciliter le règlement d'un conflit.

À la suite d'un accident du travail, un travailleur, qui avait subi plusieurs blessures graves, s'était retrouvé en état d'invalidité permanente. Avec le temps, l'apparition d'arthrose là où il avait été blessé avait encore aggravé son invalidité.

Bien que deux spécialistes aient estimé que le travailleur avait été rendu totalement invalide par ses blessures, la Commission des accidents du travail avait évalué son invalidité à 60 %. Après enquête, l'ombudsman a recommandé que la pension de l'homme soit augmentée à 100 %.

La Commission estimait que sa position était juste mais, dans un effort pour résoudre la différence d'opinion, avait accepté de réévaluer le niveau d'invalidité du travailleur. La réévaluation avait cependant été retardée par un nouvel accident du travailleur qui était tombé, sa jambe blessée n'ayant pas pu le soutenir. Après qu'il se fût remis, son niveau d'invalidité avait été évalué par la Commission à 85 %.

L'ombudsman a estimé que c'était là une réponse appropriée et adéquate de la part du ministre.

L'ombudsman, ayant pris acte des graves blessures de l'homme et doutant qu'il puisse jamais reprendre un emploi, a demandé à rencontrer le président de la Commission dans un effort pour régler le problème. La Commission a accepté de réexaminer la question et, compte tenu de l'importance et de la multiplicité des blessures indemnifiables du travailleur, a décidé que sa pension serait augmentée à 100 %.

L'augmentation serait versée avec effet rétroactif au moment de la chute.

RÉSUMÉ N° 2

L'intervention de l'ombudsman peut souvent constituer une solution de rechange aux litiges coûteux qu'entraînent les demandes d'indemnisation.

Une personne avait eu un accident de voiture causé par une accumulation de gravier et d'eau sur le revêtement de la route qu'elle utilisait régulièrement pour aller travailler. Elle estimait que l'accident s'était produit parce que sa voiture avait dérapé sur le gravier qui avait été déposé sur la route goudronnée par la niveauuse du ministère des Transports, et que ce dernier devrait être tenu responsable des dommages.

La position du ministre était qu'il n'y avait pas eu négligence et qu'il n'était donc pas responsable des dommages causés par l'accident.

Après enquête, l'ombudsman a conclu qu'il y avait suffisamment de preuves pour étayer la prétention de la plaignante. L'ombudsman a recommandé qu'elle soit remboursée pour la valeur de remplacement de sa voiture de 1974 ainsi que pour ses débours, notamment des frais dentaires et les frais de transport occasionnés par le fait qu'elle s'était retrouvée incapable de conduire par suite de l'anxiété causée par l'accident.

Le ministre a accepté la recommandation de l'ombudsman et a émis un chèque d'un montant de 2880 \$ à l'ordre de la plaignante.

RÉSUMÉ N° 3

L'intervention de l'ombudsman peut parfois amener un ministre à modifier la façon dont il interprète et administre une loi.

Un éleveur avait fait une demande

d'indemnisation aux termes de la Loi sur l'immatriculation des chiens et la protection du bétail et de la volaille après que son troupeau de chiens et des loups. Le troupeau avait enfoncé la clôture et s'était dispersé dans un marais, avec

perte d'au moins un animal qui s'était noyé.

Le ministre de l'Agriculture et de l'Alimentation avait examiné l'affaire et un

évaluateur provincial avait recommandé

qu'aucune indemnisation ne soit accordée parce

qu'il n'avait pas trouvé la preuve que la perte était due à l'attaque de prédateurs.

2^e PARTIE

CLARIFICATION DU MANDAT DE L'OMBUDSMAN

Le rapport annuel 1988-1989 faisait mention de deux mises en cause de la compétence de l'ombudsman qui étaient allées jusqu'au stade de la poursuite judiciaire. Le litige est maintenant terminé, avec les résultats suivants :

1. CONSEIL DES TECHNICIENS EN RADIOLOGIE

Le Conseil soutenait que l'ombudsman n'avait pas compétence pour enquêter sur ses actions parce qu'il est un organisme indépendant qui supervise une profession auto-réglementée. La Cour divisionnaire a entendu la cause en janvier 1990 et a confirmé le droit de l'ombudsman de faire enquête sur les plaintes contre ce conseil.

2. LE MINISTÈRE DES ÉTABLISSEMENTS FINANCIERS, ET AL

Le Procureur général, au nom du ministère des Établissements financiers et au nom du ministère de la Santé et du ministère de l'Agriculture et de l'Alimentation, soutenait que l'ombudsman n'avait pas compétence pour enquêter sur les actions des fonctionnaires qui s'acquittent de leurs tâches en application d'un décret. La Cour divisionnaire a entendu la cause en décembre 1989 et a confirmé le droit de l'ombudsman de faire enquête sur les plaintes dont il (elle) est saisi(e) dans ces circonstances.

prise de retraite. Hydro-Ontario a également accepté de mettre ses employés présents et passés au courant de cet avantage social supplémentaire par le biais des publications de la compagnie. Hydro-Ontario a en outre accepté de verser des prestations de pension à cette plaignante.

RAPPORTS SPÉCIAUX À L'ASSEMBLÉE LÉGISLATIVE

Un rapport spécial sur Farm Q a été présenté à l'Assemblée législative en 1989, mais l'affaire n'est toujours pas réglée. En février 1990, l'ombudsman a de nouveau examiné l'affaire de près et a soumis un nouveau rapport à l'Assemblée législative avec ses conclusions et recommandations. À la fin de l'exercice financier, le comité permanent n'avait toujours pas fait rapport à l'Assemblée législative sur cette affaire.*

En septembre 1989, l'ombudsman a soumis un rapport spécial à l'Assemblée législative relativement à la plainte de Madelle W. contre le ministère de la Santé. Madelle W. soutenait que la décision du Régime d'assurance-maladie de l'Ontario de ne pas la rembourser pour le coût de location d'un tire-lait électrique pour nourrir son fils qui était né prématurément, était déraisonnable.

Après examen du rapport de l'ombudsman, le comité permanent a recommandé que l'Assemblée législative soutienne la recommandation de l'ombudsman à savoir que le ministère inclue, à titre de service assuré, le coût des tire-lait électriques pour nourrir les bêtes prématurées. Le comité a également recommandé que l'Assemblée législative soutienne la recommandation de l'ombudsman que le ministère élabore des critères bien définis relativement à la gestion du programme d'appareils et accessoires fonctionnels, et a ajouté sa propre recommandation que le ministère réévalue le processus aux termes duquel il détermine quels programmes, appareils et accessoires, et allocations sont financés par le ministère.

Par la suite, le ministère a décidé de procéder à un réexamen complet du programme d'appareils et accessoires fonctionnels. L'examen est terminé et un rapport doit être publié sans tarder.

* Le 19 avril 1990, le comité permanent a présenté un rapport spécial sur Farm Q à l'Assemblée législative.

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EDUCATION DU PUBLIC

Dans le but de mieux faire connaître les services de l'ombudsman, diverses stratégies ont été utilisées afin de rejoindre une proportion plus importante de la population de l'Ontario. Notons en particulier la distribution dans toute la province de matériel imprimé y compris le rapport annuel, des dépliant, des brochures, des circulaires, des affiches et des feuilles de renseignements dans quatorze langues différentes. Le Bureau a également distribué des descriptions des services de l'ombudsman sur cassettes et en braille.

Des annonces de service public ont été élaborées et distribuées aux médias. Des présentations ont été faites auprès de 150 organismes communautaires. Des expositions et des présentations audio-visuelles ont circulé dans toute la province.

À MENTIONNER

En juillet 1988, l'ombudsman a soumis un rapport spécial à l'Assemblée législative concernant l'admissibilité à la prestation de survivant d'une personne qui avait épousé son conjoint après qu'il eût pris sa retraite. L'affaire mettait en cause la Caisse de retraite des enseignants et (comme mentionné à la page 25) les recommandations de l'ombudsman et du comité permanent ont donné lieu à des modifications de la loi ainsi qu'à des versements rétroactifs, et la plaigante a été jugée admissible à la pension de retraite. Au cours de cette enquête, l'ombudsman a été saisi d'une plainte presque identique par une veuve dont le mari avait bénéficié d'une pension d'Hydro-Ontario.

L'ombudsman a fait des recommandations similaires à Hydro-Ontario, à savoir que l'on procède à un réexamen de la politique des pensions dans le but d'y inclure des prestations aux conjoints survivants indépendamment du moment du mariage et qu'une pension soit accordée à cette plaigante à compter de la date de la mort de son mari. Comme les pensions de retraite d'Hydro-Ontario sont négociées avec le syndicat, il a été convenu que l'affaire serait portée, aux fins de discussion, devant les représentants du syndicat dans le cadre de la prochaine convention collective. Cet article a été ratifié par le syndicat et par la direction et, en conséquence, des prestations de retraite sont maintenant versées aux conjoints survivants qui ont épousé un(e) ancien(ne) employé(e) après la

1^{re} PARTIE

EXERCICE FINANCIER (1989-1990)

En 1989-1990, le nombre de demandes d'aide traitées par le bureau a été de 30, 176.

SERVICES RÉGIONAUX

Au cours de l'exercice passé, l'accent a été mis sur l'amélioration des mécanismes de prestation des services.

La réorganisation de la structure de gestion a permis de dispenser orientation et conseils au personnel de tous les secteurs de la prestation des services. En conséquence, les neuf bureaux régionaux fonctionnent maintenant avec plus de cohérence, qu'il s'agisse du traitement des demandes d'aide, de l'éducation du public ou de l'administration.

Conformément au modèle élaboré au cours des deux dernières années en matière de locaux, le bureau d'Ottawa a été réinstallé dans des locaux plus petits et moins coûteux, et le bureau de Windsor dans des locaux plus centraux et plus indépendants. Un bureau a été ouvert à North Bay et des négociations sont en cours pour installer le bureau de Kenora dans des locaux plus visibles et plus accessibles.

SERVICES EN FRANÇAIS

Avec l'entrée en vigueur de la Loi de 1986 sur les services en français, l'ombudsman a pris des initiatives importantes pour améliorer la prestation des services aux francophones.

Un poste d'agent(e) des services en français a été créé. L'agent(e) dispense aide et conseils aux cadres supérieurs relativement à la prestation des services aux clients francophones. L'agent(e) des services en français est également chargé(e) de fournir des services locaux à la communauté francophone de l'Ontario afin de mieux faire connaître l'ombudsman et d'encourager le public à recourir à ses services.

1^{re} PARTIE

INTRODUCTION

Le présent rapport annuel porte sur l'exercice financier allant du 1^{er} avril 1989 au 31 mars 1990. Le rapport est divisé en deux parties.

La première partie fournit une vue d'ensemble des opérations du Bureau de l'Ombudsman au cours de l'exercice passé. La deuxième partie présente divers résumés de causes qui illustrent la variété des plaintes dont l'Ombudsman est saisi(e). Les annexes contiennent des renseignements, statistiques et autres.

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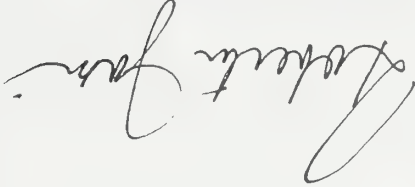
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L'ombudsman appraise comme un moyen objectif d'améliorer le niveau de justice au sein de l'administration du gouvernement. De cette façon, les fonctionnaires et les membres des organismes publics et des tribunaux auront de solides raisons de voir dans les interventions de l'ombudsman un signe de bon gouvernement, un instrument de justice et d'égalité et un moyen d'examen indépendant de la façon dont les lois sont appliquées dans le contexte de causes réelles — et non comme une indication que quelque chose ne va pas.

J'ai également l'intention d'examiner non seulement les plaintes individuelles mais aussi les problèmes et les tendances systémiques, et de partager mes découvertes avec les organismes du gouvernement, l'Assemblée législative et la population de l'Ontario.

À titre de membre de l'Assemblée législative, d'administratrice chargée de représenter les intérêts des résidents de la province pour lesquels je constitue un dernier recours lorsqu'ils ont des problèmes avec l'administration du gouvernement, je serai heureuse de rencontrer les députés pour voir avec eux comment mes services peuvent les aider à régler les problèmes soulevés par leurs électeurs.

C'est pour moi à la fois un honneur, un défi et une obligation de faire avancer l'institution d'ombudsman au moment où l'Ontario s'apprête à entrer dans le XXI^e siècle, et j'attends avec une certaine impatience le rapport annuel de l'année prochaine où je pourrai partager mes sentiments sur le chemin parcouru et le chemin encore à parcourir.



Roberta L. Jamieson

L'amélioration de l'administration du gouvernement. À cet effet, je réexaminerai le mandat des bureaux régionaux pour voir comment accroître notre rayonnement sans augmenter les coûts ni créer de nouvelles complications dans l'administration de nos fonctions.

J'ai l'intention d'utiliser mes connaissances dans le domaine du règlement mutuellement satisfaisant des litiges difficiles hors du recours à la confrontation et aux rapports de force. Au niveau aussi bien de la réception des plaintes que des enquêtes et des rapports, mon objectif sera non seulement d'aider les individus lésés mais, dans un esprit de règlement où tout le monde gagne, d'améliorer l'administration du gouvernement pour tous les résidents de la province.

Dans ce même esprit, j'ai l'intention d'entreprendre un travail de prévention, c'est-à-dire de conseiller les organismes gouvernementaux qui s'adressent à moi sur la façon dont ils peuvent amener leurs procédures et leurs règlements au niveau d'administration démocratique qui est attendu d'eux. Mon personnel et moi-même offrons également des séminaires aux hauts fonctionnaires sur la façon dont opère la *Loi sur l'ombudsman* pour que mon mandat soit compris comme un moyen d'évaluation indépendante qui protège les intérêts aussi bien du public que des fonctionnaires.

J'ai l'intention de redoubler d'efforts pour veiller à ce que ceux qui s'adressent à moi soient accueillis par un personnel compétent, professionnel et attentionné. Je veux que mon personnel soit représentatif des résidents de l'Ontario, mais je veux aussi qu'il soit capable de fournir une aide prompte et compétente à tous les segments de la population de l'Ontario. J'ai l'intention de communiquer directement avec les diverses communautés de l'Ontario et je serai heureuse d'entretenir en personne des contacts réguliers avec elles.

Je me donne également pour but, au cours de l'année qui vient, de renforcer le fait que l'ombudsman est neutre et indépendant, et non un défenseur passionné. Il me faut écouter et examiner toutes les parties si je veux que

Chaque ombudsman a des perspectives, des compétences et des objectifs qui lui sont propres. Au cours de l'année qui vient, j'ai l'intention de commencer à mettre en oeuvre des changements qui renforceront, à mon avis, la fonction d'ombudsman en Ontario. Les temps changent et il est important que l'ombudsman offre un service qui corresponde aux besoins de tous les résidents de l'Ontario.

J'ai l'intention de prendre des mesures qui auront pour effet de mieux faire connaître les services de l'ombudsman. Je veux sensibiliser davantage le public au fait que l'ombudsman peut travailler avec les résidents de la province à

L'année qui vient

Je me suis présentée devant le comité permanent sur l'administration de la justice pour discuter des solutions de réchange au règlement des conflits, domaine où j'ai une certaine expérience. Je me suis également présentée devant le comité permanent sur l'ombudsman pour expliquer de quelle façon j'étais parvenue à certaines conclusions relativement à une cause au sujet de laquelle j'estimais que le ministère concerné n'avait pas mis en oeuvre mes recommandations d'une façon appropriée.

L'année passée

L'année passée a donc été une année de transition, partagée entre le troisième ombudsman, une ombudsman intérimaire et moi-même. Dans ce rapport annuel, je ne saurais m'attribuer le mérite ni des sept premiers mois, ni de la plus grande partie du reste de l'année, pendant laquelle je me suis installée et où j'ai commencé à organiser mes opérations en fonction des orientations particulières que j'ai l'intention de prendre au cours de l'année qui vient. Je serai heureuse, dans un an d'ici, de déposer un rapport annuel sur ma première année complète à titre d'ombudsman qui fera le point sur les progrès effectués dans l'accomplissement de mes objectifs.

Ce rapport comprend donc une présentation objective des opérations effectuées au cours de l'année dont, pour la plupart, le mérite ne me revient pas. Je veux cependant profiter de ce message pour donner une indication de certaines des orientations que j'ai l'intention de prendre au cours de l'année qui vient. Je serai heureuse, dans un an d'ici, de déposer un rapport annuel sur ma première année complète à titre d'ombudsman qui fera le point sur les progrès effectués dans l'accomplissement de mes objectifs.

À la fin du dernier exercice financier, mon prédécesseur, M. Daniel G. Hill a pris sa retraite, et Eleanor Meslin a été nommée ombudsman intérimaire. Je suis reconnaissante à M. Hill pour les fondations qu'il a posées au cours de son mandat. Je rends également hommage à la compétence dont a fait preuve Madelle Meslin à titre d'ombudsman intérimaire pendant la période qui a précédé ma nomination le 30 octobre 1989 et je la remercie de l'aide qu'elle m'a apportée avant de démissionner en février 1990. Grâce au travail effectué par ces deux personnes, j'ai hérité d'un personnel compétent et dévoué, bien déterminé, avec l'aide d'une administration capable, à veiller à ce que les résidents de l'Ontario soient traités en toute justice par les administrateurs du gouvernement de l'Ontario.

UNE ANNÉE DE TRANSITION

MESSAGE DE L'OMBUDSMAN

ROBERTA L. JAMIESON





Ombudsman Ontario

Robert L. Jamieson
Ombudsman

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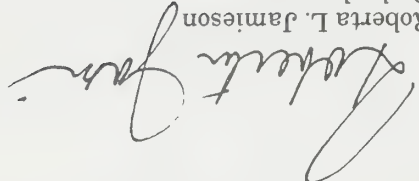
28 juin 1990

Monsieur le président
de l'Assemblée législative
Queen's Park
Toronto (Ontario)

Monsieur le président,

J'ai le plaisir de vous soumettre, pour qu'il puisse être présenté à l'Assemblée législative, le rapport annuel de l'ombudsman, pour la période allant du 1^{er} avril 1989 au 31 mars 1990. Ce rapport est présenté conformément à l'article 12 de la Loi sur l'ombudsman.

Je vous prie d'agréer, Monsieur le président, l'expression de mes sentiments les meilleurs.


Robert L. Jamieson
Ombudsman



REPORT ANNUEL 1989-90

OMBUDSMAN ONTARIO

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THE ONTARIO OMBUDSMAN'S ANNUAL



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OMBUDSMAN'S MESSAGE

A year ago, I set out certain objectives for the year ahead in my Report to the Legislative Assembly.

It was to have been a year of establishing foundations for the particular approaches which I intended to take during my mandate.

It is time now to evaluate progress made, and to determine specific objectives for the year ahead.

Before I set out these approaches, however, I would like to comment on the larger context in which the practice of Ombudsmanship must be considered.

The administration of government is not isolated from the

dramatic changes which are reshaping a once-familiar world. Every aspect of contemporary life is being changed by global forces beyond our control which have washed us from long-established and comfortable channels into unmarked seas where no one's survival can be taken for granted. Our population demographics, the distribution of wealth and resources, sharp challenges to our economic competitiveness, new consciousness about human rights, and many other changes of equal magnitude are making a powerful impact which will require significant change in the administration of government and the relationship between governed and government.

All over Canada, in these circumstances, the public is making new demands on government, and government is asking the public to accept new responsibilities so as to maintain the standards which we have come to expect. I consider the Ombudsman's services to be especially essential in assisting the public to have a means of having their concerns heard. It is natural that simultaneously we will experience excellent advances in standards along side distressing areas in which government has not been able to keep up with expectations. Satisfaction will be tempered with frustration.

Not long ago, governments were expected to see the general outlines of the future in order to adjust and fine-tune. Now, however, the changes are so rapid and so unpredictable and of such a fundamental nature that preparations are often not possible. Qualities such as flexibility, the ability to change rapidly, and the capacity to co-exist with uncertainty are required both in our institutions and in our personal lives if we are able to meet the challenges and opportunities of our times. These qualities are particularly difficult for our bureaucracies to acquire, for they have not been constructed with these qualities in mind.

All of this places new importance on instruments such as the Ombudsman to serve as early warning systems to bring to the government's attention areas that are causing public concern. My mandate allows me to see what is happening across the full panorama of governmental organizations, allowing me to note where new circumstances have an impact on administrative fairness.

A new trend is already starting to impact on my work as Ombudsman. Recent events in Canada have shown that the Canadian public is no longer content to give blank proxies to government for long periods, nor to consider that "government knows

best" when it comes to determining public policy. Demands are made for consultation and input in decision-making, not only for routine government programs, but as well for such matters as provincial positions in national fora.

This will mean that here in Ontario, I may be asked to investigate new kinds of questions of administrative fairness in areas which are within my mandate, but which the public has never before raised. A few examples come to mind: did officials consult them? did officials provide them with information they had so an informed position could be taken? was their position fairly reported? were government studies adequate, balanced, and objective?

Openness, cooperation, and working partnerships and alliances are going to be essential if Ontario is to meet the economic, political, and social challenges of this decade. If these attitudes can be incorporated in the public service, they will be spread rapidly throughout other sectors of the province. Government cannot expect people and businesses to work together and cooperate if government administration takes an adversarial attitude toward complaints and concerns. There is great potential for many of the problems of our times to be resolved in a manner acceptable to all parties if government itself can show leadership in encouraging and participating in compromise, working out win-win situations, and finding ways to incorporate diverse viewpoints in agreements.

To ensure that my own mandate will be exercised effectively and appropriately under these circumstances, I prepared a "Mission Statement" which is presented as a chapter of this Report. The statement sets out an ideal I am working toward on a day-to-day basis. While I am willing to be measured against it, I should also say it is not written in stone, I welcome comment and as I have noted above, it will be subject to improvement over the course of time.

Making the People of Ontario Aware of the Ombudsman's Services

One of the major objectives I set in my Report last year deals with the interplay of public awareness of how to access the Ombudsman's services, correct knowledge as to what those services are, and public access to the services. I want to be sure all segments of the population in every part of Ontario know about the Ombudsman and how I can work with the

people of the province to improve the quality of public administration. I want them to know what the Ombudsman can and can not do. And as this is achieved, I want to make sure that my services are easy to get to, easy to use.

To assist me in achieving this objective, I commissioned a survey on public awareness. It confirmed my suspicion that far too few people were aware of the Ombudsman – particularly the people who might be more vulnerable to unfairness and who have limited resources to deal with the problems which result. A summary of the findings of the survey appear in a separate chapter of this Report.

The survey also indicated that persons encountering problems with the administration of government usually do not take any action of any kind, and if they do, they rarely give consideration to seeking the Ombudsman's help. Yet when information is provided, Ontarians readily endorse the need to have an Ombudsman. Further research will be necessary to understand what is behind these attitudes.

The survey also reported that a majority of the people of the province feel they are not well protected against unfair government action. It is in the interest of any government and the public itself that there be confidence in the instruments available to assist them to resolve problems with government administration, and that public dissatisfaction with government be reduced. The Ombudsman can be a valuable instrument in both respects. I am carefully studying the survey and formulating creative initiatives to deal with this double challenge so that Ontarians will recognize the role the Ombudsman can play in improving the quality of government administration.

I have been impressed by the greater access afforded to the people of Ontario by my district offices. The North Bay office has re-opened, and in June, the Kenora office relocated to a more visible and accessible location.

I also have assigned specially-trained staff to a newly-created Community Access and Intake Directorate so that focused attention could be given to meeting my standards of access and efficient resolution of concerns. I have mandated this new directorate to make my services more accessible, to engage in strategic community education initiatives, and to improve the process through which persons approaching my offices for assistance are received so that their concerns will be dealt with efficiently and promptly from the very outset. The directorate's work-

load has increased significantly as the result of provincial government decentralization and resultant increases in the number of complaints and the need for public education.

In another initiative to increase accessibility, a TDD for communicating with persons who are hearing impaired or deaf was installed in the central office. Computers were installed in my district offices for more efficient communications. I also intend to publish new printed materials in the year ahead.

Serving All Aspects of the Ontario Public

I have taken several steps to ensure that all parts of the diverse Ontario public are well-served by all members of my staff. I have taken advantage of every opportunity to form a staff complement which is representative of the people of Ontario. I began a program of cross-cultural sensitivity training to operate on a continuing basis.

My district offices have had responsibility for outreach and public education for some time, and I now intend to implement this practice in the Metropolitan Toronto area as well.

While these initiatives are intended to reach all peoples of Ontario, I feel a special obligation to be sure that my services are available and known to those people who for whatever reason are most vulnerable to unfairness, or most likely to be subjected to unfairness, or least able to defend themselves when unfairness occurs.

Improved Communications with Members of the Legislature

The Ombudsman is an official of the Legislative Assembly, instructed by a special mandate and equipped with investigative powers to investigate complaints and assist the people of the province as a last resort in resolving their concerns about government administration. So that the Assembly can be better served, I have appointed two senior staff members to develop improved liaison with Members of the Legislature. I have personally met with each party caucus. My staff is conducting sessions with Members' staff so they are familiar with the mandate, functions, and processes of the Ombudsman. I expect this improved cooperation will assist me to provide optimum service to the people of Ontario, and to deal with issues raised by each Member's constituents.

Appropriate Methods of Conflict Resolution

I have found a welcome reception among officials and the public for my non-adversarial approach to conflict resolution. There are times when confrontation and power are required – but generally, both officials and the public respond positively to my offer to assist them in seeking out mutually-satisfactory resolution of issues and concerns. Efforts have been made in staff-training toward further development of conflict resolution skills for the facilitation of win/win settlements which a) respond to the concerns of the individual; b) result in general improvement in the administration of government for all people of Ontario; and c) meet the high standards of fairness I am pledged to uphold.

I am encouraged by the potential of this direction, and I commend it to the government for use in resolving contentious public conflicts around such issues as the environment.

Preventative Ombudsmanship

I have made my services available to those governmental organizations who wish to bring their procedures and regulations up to “state of the art” standards of democratic administration. I continue to offer meetings with officials of ministries, boards, agencies, tribunals, and commissions to discuss in general terms the attributes which promote fairness, equity and justice in administrative policies, practices, and procedures.

I have also met with many deputy ministers and heads of tribunals, boards, agencies and commissions to review with them the approach I take in investigating concerns and making recommendations for improvement. My staff and I acquaint officials with the opportunities presented by the *Ombudsman Act* to improve the administration of government while protecting the interests of the public and public servant alike.

Systemic Issues and Trends

While most of the Ombudsman’s activities are dedicated to resolving the concerns of individuals, I have noted a number of issues which appear to be systemic in nature. The extensive overview which I have of government administration also enables me to identify trends which may not be apparent to any one

governmental organization.

Since my mandate gives me the obligation and authority to investigate and report on such matters, I had intended during this year to review more of these systemic issues and trends.

I discovered, however, that I must first reorganize resources, collect data, and develop an increased capacity to deal with these areas of concern.

The survey I commissioned indicates strong public support for the Ombudsman’s findings to be used to prescribe preventative action which will result in improvements which will benefit many people. I anticipate good public support for the systemic overviews I would like to make. The challenge will be to do so without disrupting resources now dedicated to assisting persons with individual concerns and complaints.

Protecting the Neutrality and Independence of the Ombudsman

It is at the heart of the Ombudsman’s essential purpose that she be independent of government, and without bias in the conduct of her investigations. This enables the Ombudsman to be seen as an objective means of improving the level of fairness in government administration. This independence and neutrality must both be demonstrated and appear to be demonstrated in every act, since the survey I conducted indicates the Ontario public is sceptical that the Ombudsman really is independent.

These qualities are a constant theme in discussions with staff so that they will be alert to situations in which inappropriate external pressures are suggested. In my public speaking, I emphasize the value both to the public and to government to maintain this vital independence so that the Ombudsman may continue to be an effective instrument of improved public administration.

Administration

So that I can exercise my mandate more effectively and efficiently, I have strengthened the organization of my staff without increasing my overall staff complement. Three new directorates have been organized: Human Resources, Community Access and Intake, and Investigative and Legal Services. In order to continue to retain and attract competent staff, I engaged expert assistance to develop a salary plan for all levels which is competitive with both the

public and private sector. An internal staff identification and tracking system is being put in place to assist me in developing employment equity policies, goals and timetables for achievement.

The Cooperation of the Public Service

I wish to extend my thanks to the many public servants who exercise a strong individual commitment to provide high-quality service. I encourage as well those who are finding creative ways to insure that high standards of administrative fairness keep pace with the fundamental changes which have impact on any government's way of doing business. Finally, I give special appreciation to all public servants who have given me and my staff tremendous assistance and cooperation in the exercise of my mandate.

These public servants would be the first to point out there is still room for improvement even in their own work. There are some areas in which dramatic improvement is required, and these will continue to be the subject of my attention whenever an opportunity can be found to create progressive change.

It should be noted that for this fiscal year, it has not been necessary for me to seek the intervention of the Legislative Assembly in order to have my recommendations implemented.

I would like to take this opportunity to recognize and thank my staff, whose diligence and commitment to the highest standards of public service are evident throughout the year.

This message is intended, among other things, to share my views on the course I have taken and the objectives which I have set for the year ahead.

These are objectives against which I will measure accomplishments a year from now.

I invite all those who read this report to share their ideas with me about how I can improve the services which I offer as well as how we in Ontario can shape the institution of the Ombudsman to better meet the needs of the 21st Century.

I believe we have the opportunity in Ontario to involve the people of the province in forming a model of public administration which is on the leading edge in its standards of fairness and respect for all. It is my commitment to apply my mandate as Ombudsman to that objective.

Roberta L. Jamieson
Ombudsman

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MISSION STATEMENT

The Ombudsman achieves this goal through the prompt, efficient investigation and resolution of complaints, issues and concerns which are brought to her attention or which are investigated on her own initiative.

While her services are available to all members of the Ontario public, the Ombudsman is particularly alert to the need to serve those individuals and groups in society who are most vulnerable to injustice.

The Ombudsman is assisted in retaining the confidence of public and officials by a professional staff who uphold the same high professional standards expected of the Ombudsman herself. Through internal training and professional development programs, the Ombudsman provides opportunities for her staff to enhance their capacity to provide service to the public.

To achieve this mission, certain principles and practices are applied throughout the Ombudsman process.

Principles and Practices With Respect to the People of Ontario

The Ombudsman's services are kept relevant and appropriate to the people of Ontario as needs and circumstances change.

The Ombudsman and her staff are alert to changes in technologies, government practices and policies, demography, economic conditions, etc., so that the Ombudsman can make adjustments in the manner in which her services are offered and adopt appropriate standards and criteria.

The Ombudsman makes all possible effort to ensure that all people in Ontario are aware of the availability of her services.

The Ombudsman conducts a wide range of outreach activities so that everyone wishing to raise a concern or issue regarding the administration of a provincial government organization will be aware that included among the options of available assistance are the services of the Ombudsman. These activities are also intended to assist the public to have a complete and accurate understanding of her services so that public expectations are reasonable.

The services of the Ombudsman are accessible to all who wish to use them.

Knowing that the Ombudsman's services are available is not enough. The people of Ontario must be able to contact a representative of the Ombudsman in an easy manner without delay by telephone, by writing, in person, or through a Member of the

Legislature. For this reason, the Ombudsman provides a friendly reception at convenient hours with convenient physical access and a convenient means of communication.

Every step of the Ombudsman's processes and procedures is "people friendly".

So that all persons seeking the Ombudsman's assistance may feel welcome, bureaucratic requirements are kept to a minimum. People are provided information in a friendly fashion so they can understand what the Ombudsman does, how services are provided, and what can be done within the Ombudsman's legislated mandate. When the Ombudsman's services would not be the best or only option, the Ombudsman will make a reasonable effort to refer the person requesting assistance to another source of assistance.

The Ombudsman's services are rendered in an appropriate manner.

The Ombudsman's staff go beyond simply reflecting the cultural, linguistic, and special circumstances of the people of Ontario. They also are sensitive to cultural, linguistic, socio-economic and other factors which contribute to the diversity of the Ontario public.

The Ombudsman's services are also rendered in a timely, cost-efficient, and effective manner.

One ideal for effectiveness is that the matter is resolved to the satisfaction of the client and the governmental organization involved while meeting the Ombudsman's standards of fairness. Another is that the remedy permanently prevents the situation from recurring.

The Ombudsman acts in an impartial manner, using objective standards, so the people of Ontario may have confidence in her decisions.

The Ombudsman is not an advocate for the public nor a defender of the bureaucracy nor a perpetual critic of government. Her work is to bring objective scrutiny to bear on the administration of government to determine that the high standards expected by the people of Ontario are applied fairly, consistently, and evenly. She reaches her decisions by reference to identifiable standards and criteria so they can be seen to be objective and without bias.

The independence of the Ombudsman must be

made obvious to all: the public, officials, political parties, and the government of the day.

The Ombudsman's educational activities increase the public's knowledge of Ombudsmanship as a mechanism of direct participation in the improvement of democracy.

The Ombudsman encourages educational institutions at all levels to include modules of instruction on Ombudsmanship in courses such as administrative law, public administration, political science, civics, etc. Consideration of Ombudsmanship should also be included in the broader examination of appropriate conflict resolution mechanisms.

The Ombudsman assists the people of Ontario and provincial governmental organizations to expand their options to deal with issues and concerns.

The Ombudsman assists the people of Ontario to feel confident in asserting their rights with governmental organizations, to understand what constitutes acceptable standards of government service, and to consider and skillfully use a variety of avenues to resolve their issues and concerns.

Principles and Practices With Respect to Governmental Organizations

The Ombudsman performs her services in a manner which assists governmental organizations to provide their administration to the people of Ontario at the high standard which the public expects.

Without diminishing her ability to use her powers and exercise her mandate, the Ombudsman demonstrates to governmental organizations that her investigations and recommendations can be helpful to improve government administration.

The Ombudsman encourages governmental organizations to regard her as a creative resource for progressive government administration.

The Ombudsman assists governmental organizations to build within their policies, processes, and regulations adequate means through which conflicts, issues and concerns can be prevented or resolved wherever possible in a mutually-acceptable manner. Her services are provided in a manner which will assist governmental organizations to develop and implement standards and practices which lead to the improvement of government services and decisions.



Principles and Practices With Respect to Legislators

The Ombudsman carries out her mandate with appropriate regard for the role of the Legislative Assembly, the Standing Committee on the Ombudsman, and individual Members.

The Ombudsman recognizes her role as an official of the Legislative Assembly and the need for her to comply with legislated requirements as well as the Legislature's own processes. She welcomes the opportunity to cooperate within the parameters of her mandate with Members of the Assembly who are acting on behalf of persons seeking the Ombudsman's services.

Principles and Practices With Respect to the Evolution of Ombudsmanship

The Ombudsman contributes to the evolution of Ombudsmanship by developing standards and criteria regarding government administration.

So that the public and governmental organizations will understand the standards and criteria underlying the findings arrived at by the Ombudsman, these will be clearly stated and made known.

The Ombudsman ensures that her own organization adheres to the standards which are expected of others.

So that Ombudsmanship will be held in high regard, the Ombudsman and her staff practice the high standards which are expected of governmental organizations. The Ombudsman is creating a model of administration which provides a congenial and efficient work environment for those persons who assist her in fulfilling her mandate.

The Ombudsman demonstrates the development and use of appropriate techniques and mechanisms to resolve issues and concerns.

While the Ombudsman has been provided with extensive investigative powers and a mandate to make findings and recommendations, she may determine that it is not necessary in many situations to use the full range of these powers. She may determine that other methods of resolving an issue may be more appropriate in some situations or at a particular stage in the process. The Ombudsman is securing the

necessary internal and external resources so these methods can be applied where appropriate. The Ombudsman's staff training and professional development programs provide opportunities for the enhancement of problem-solving skills.

Principles and Practices With Respect to Systemic and “Own Motion” Concerns

In addition to investigating individual complaints, the Ombudsman examines systemic and “own motion” concerns.

So that the interests of the public can better be protected and so that public confidence in the administration of government can be maintained, the Ombudsman is able to dedicate appropriate resources to deal with systemic concerns and to make investigations on her own initiative. This type of investigation may arise:

- ▶ when conduct, policies, standards, rules or procedures which appear to be neutral have an adverse effect on members of a particular group, or
- ▶ when there are a series of similar complaints which indicate a “class action” investigation should be undertaken, or
- ▶ when issues come to the Ombudsman's attention because similar issues are raised by the public with respect to a number of governmental organizations, or
- ▶ when a particular organization appears to have a marked increase in the number or types of complaints, especially when compared with other governmental organizations, or
- ▶ when changing circumstances, standards, or practices require reexamination to ensure a high standard of administration is in place.

Remedies implemented as the result of one such investigation may make it unnecessary for the public to register a large number of related individual complaints.

In addition to matters the Ombudsman notes in the course of her duties, she may receive suggestions for systemic investigations from her staff, the public, Members of the Legislature, or by governmental officials or organizations.

SELECTED CASES

ILLUSTRATING
THE OMBUDSMAN'S
WORK
AND REASONS FOR
COMPLAINT.

Almost every matter dealt with by the Ombudsman tells a story of its own. Some cases, however, illustrate particular features that have an educational value. Cases have been selected for this annual report because they illustrate the types of complaints received by the Ombudsman; they illustrate the principles used by the Ombudsman to decide if the action or inaction of a governmental organization is unfair, unreasonable, or wrong; or they illustrate how the Ombudsman helps governmental organizations to understand and meet peoples' needs, not only in individual cases, but through long-term preventative measures.

The cases in this part illustrate the most common concerns brought to the Ombudsman's attention. Each was investigated and closed during this fiscal year. In order of frequency:

1 *wrong or unreasonable interpretation of information and evidence;*

2 *unreasonable delay;*

3 *wrong or unreasonable interpretation of criteria, standards, guidelines, regulations, laws, etc.;*

4 *omission to monitor or manage an agency for which it has responsibility;*

5 *failure of a governmental organization to adhere to its own processes, guidelines and policies or to apply them in a consistent manner;*

6 *failure to provide sufficient or proper notice;*

7 *a decision or policy has an adverse impact or discriminatory consequence for an individual;*

8 *an inadequate or improper investigation was conducted;*

9 *unfairness in hearing procedures;*

10 *insufficient reasons for decision or no reasons given;*

11 *misleading or wrong information is provided to an individual which consequently placed the person at some disadvantage;*

12 *failure to keep a proper record.*

The Ombudsman's involvement can result in a governmental organization reconsidering its decision.

Ms. J had insured her family's plane tickets against cancellation because she was concerned that her father's state of health might make it impossible for them to travel.

In fact, when her father became very ill and subsequently died, she did have to cancel and she claimed compensation. Her claim was denied because the company said her father had died of a condition that existed before she bought the tickets. She asked the Superintendent of Insurance to review the matter. The position of the insurance company was upheld.

Ms. J then asked the Ombudsman for assistance. She pointed out discrepancies in the information which had been reviewed, and the facts of her father's medical problems, his treatment dates, and the main cause of his death. The Ombudsman asked the Ontario Insurance Commission to review the file. It did so, and as a result, the insurance company was asked to pay the claim.



Example 2:

Mr. R was dissatisfied with the denial of his application for Family Benefits on the ground he was not disabled or permanently unemployable. He was sure all available medical information submitted by his city social service department had not been considered. Yet his appeal to the Social Assistance Review Board failed when the original decision was upheld. He asked the Ombudsman to investigate.

The Ombudsman found that the material provided by the Ministry to the Review Board contained serious omissions. Mr. R's more recent medical evidence had not been considered in the review. This seemed to have happened because the medical adjudicator who provided the documentation had conducted an inadequate review. The Ombudsman also found deficiencies in the training and guidance provided to the adjudicators.

The Ministry agreed with the Ombudsman's findings and recommendations. Mr. R was granted two years retroactive benefits, with interest.

Example 3:

Mr. M felt he had supplied sufficient medical information to support his application for Family Benefits Allowance, but his application was denied. Although he ultimately was successful in gaining approval, he felt that the past decisions had been unreasonable.

The Ombudsman conducted a detailed and lengthy investigation and found that sufficient medical evidence had indeed been submitted much earlier than the date eligibility was approved. As well, the investigation determined that the review of medical evidence had not been thorough, resulting in the medical report containing inaccurate and misleading information which had caused the original rejections.

The Ombudsman recommended that Mr. M receive retroactive benefits, and that improvements be made in the training provided to medical adjudicators. The Ministry accepted the Ombudsman's recommendations.

1



Wrong or unreasonable interpretation of evidence.

Mr. F's complaint to the Ombudsman resulted in him receiving full compensation from a provincial organization after its delays had resulted in loss of a settlement cheque.

Mr. F took an employment-related complaint to the Ontario Human Rights Commission and agreement was reached regarding a settlement. A cheque was sent to the Commission, but it was not delivered until some four months later. At this time, the cheque was returned for insufficient funds, and it was later discovered that the employer had gone into receivership. Mr. F felt the Commission should be held responsible, but he could not obtain a reply to his claim. He asked the Ombudsman to investigate.

After the Ombudsman completed her investigation, lengthy negotiations were pursued which resulted in the Commission issuing a cheque to Mr. F for the amount of the settlement plus interest for the period of delay.

Sometimes the Ombudsman can help a Ministry to correct an acknowledged wrong even where it appears to lack authority to provide compensation.

The Ombudsman received a series of complaints regarding delays of up to ten months in the Ministry of Community and Social Services processing referrals it had received from the Ottawa Regional Social Services. Finally the applicants had their "Form 1" applications completed during a home visit, but the Ministry maintained strict compliance with the legislation which stipulated that benefits could not commence prior to the completion of "Form 1".

The complainants had appealed to the Social Assistance Review Board, which found that the delay had been caused entirely by the Ministry. It reluctantly concluded, however, that it had no authority to remedy the situation.

During the Ombudsman's investigation, the Ministry explained the circumstances which had caused the backlog, and reported on joint initiatives

to alleviate the problem. It also proceeded to obtain Orders-in-Council authorizing it to make payments covering amounts the applicants would have received had their applications been processed in a timely manner.

In another matter regarding the Voluntary Exit Opportunity Plan (VEOP), a former provincial employee received interest on a late payment as the result of the Ombudsman's investigation.

When Mr. F elected to terminate his employment under the VEOP, he notified his Ministry well in advance. But it took three months for him to receive his payment. When he asked for interest on the late payment, the Ministry refused. He complained to the Ombudsman.

As a result of other investigations, the Ombudsman was able to inform the Ministry that as a matter of policy, other Ministries were paying interest on payments which had been subjected to undue delays. The Ministry agreed to pay Mr. F \$150 as interest.

Delay in implementing decisions is often the subject of complaints brought to the Ombudsman.

Mr. V asked one of the Ombudsman's northern Ontario district offices to assist him in obtaining implementation of a decision made 18 months previously by a Hearings Officer of the Workers' Compensation Board. The decision had awarded compensation to the worker and ordered the Board to determine the amount to which he was entitled.

After numerous calls to the Board by the Ombudsman's staff, Mr. V received a cheque for some \$16,000 in benefits and accrued interest. **2**

Unreasonable Delay

The Ombudsman's recommendations can result in improved legislation and fairer policies as well as compensation to the complainant.

Mr. B felt he had twice been underpaid for his work as an apprentice motor vehicle mechanic, contrary to regulations under the *Apprenticeship and Tradesmen's Qualification Act*. But the Ministry of Skills Development said it would seek compensation only for the second underpayment, and that the mechanic would have to pursue the first underpayment through the courts. Although Mr. B was successful in his suit, he incurred legal costs which he considered to be the Ministry's responsibility. He asked the Ombudsman to look into the matter.

The Ombudsman found the Ministry's enforcement officer did not have a clear understanding of policy regarding the recovery of wage arrears. The Ministry offered to pay Mr. B's legal costs and to implement several changes in its Client Services Manual and standard claim form. The Ministry also agreed to review the legislation with a view to providing a lengthier limitation period within which claims could be received.

The Ombudsman can sometimes help a person to receive new consideration for unfavourable interpretations of regulations.

When Ms. E was notified in the fall of 1988 by the federal government that her position would become redundant as of April of 1989, she was led to believe that a new position might be found for her – but the new job never materialized. Although she didn't have to report to work, her pay continued until April. When she applied for retraining benefits, however, she was told she had waited too long – the regulations clearly stated the application had to be made within six months of the last day worked – not the last day of pay.


When the Ombudsman pointed out Ms. E's special circumstances, the Ministry agreed that within the legal and technical interpretation of program requirements, it could provide Ms. E with Transition Funding.

The Ombudsman can often assist persons when a governmental organization's reliance on a technicality is an obstacle to a just resolution of the issue.

Mr. U asked the Ombudsman for assistance after the Ministry of Transportation had refused to pay a claim for damage to a hay crop when a herbicide spray used in a right-of-way vegetation control program drifted onto his hayfield. He had asked for damage to cover the value of 500 bales of hay and the labour costs of removing them from the field.

Mr. U had reported the problem without delay. The Ministry of the Environment took samples and confirmed the contamination, and recommended that a claim be filed with the Ministry of Transportation. Later, the Ministry's insurance adjusters advised the farmer that he had submitted his claim after the six-month time limit had passed. Mr. U contended this was unreasonable and unfair, since he had made an immediate report.

When the Ombudsman notified the Ministry of Transportation of her intention to investigate, the Ministry reviewed the case and found that the insurer should have returned the claim to the Ministry, since this type of damage is excluded from the policy. The Ministry agreed to pay Mr. U full compensation of \$1,096.



Wrong or Unreasonable Interpretation of Criteria, Standards, Guidelines, Regulations, and Laws

Sometimes the Ombudsman can help parties to resolve a matter by bringing additional information to bear on an issue, without an extensive investigation.

When Mr. L left his employment in a provincial hospital he was receiving Workers' Compensation benefits. As a result, he was denied a voluntary retirement option. When his subsequent requests for compensation were also denied, he asked the Ombudsman for assistance.

The Ombudsman brought the matter to the provincial government's Human Resources Secretariat. It in turn advised the Ministry that a recent court decision had ruled that employees receiving Workers' Compensation benefits were to be considered "on leave with pay". The Ministry had been unaware of the decision. It agreed to pay Mr. L a retirement compensation package.

The Ombudsman's intervention can assist a governmental agency to reconsider the fairness of a decision and to arrive at a mutually-agreeable arrangement.

Ms. W. came to one of the Ombudsman's northern Ontario district offices when the Ontario Development Corporation refused to honour a claim which she had filed with the Employment Standards Branch.

The claim was for a settlement package made available by the odc when it purchased the assets of a company which had shut down. While other employees had received a settlement, Ms. W, who had been employed by the company for 21 years, did not because she had been laid off at the time of the shut-down. She contended that her employment had never been terminated and she simply was awaiting recall.

The Ombudsman's staff made inquiries to the agencies involved, resulting in a substantial and satisfactory settlement package being offered. **3**

The Ombudsman's involvement is sometimes helpful in focusing attention on a matter which has eluded resolution by several governmental agencies.

Five francophone seniors who resided in a Housing Authority facility felt isolated because they spoke little English. They wanted to be relocated to a non-profit apartment complex where they could function entirely in French, and where their cultural needs would be better met. However, their requests for relocation were denied because they did not fit into any of the Ontario Housing Corporation's transfer eligibility criteria.

The seniors considered the OHC's policy to be improperly discriminatory, and they asked the Ombudsman for assistance.

Following extensive discussions with the OHC, the Ministry of Housing, and the local Housing Authority, the transfer was approved. The Ministry also advised that its transfer policy

4



*Omission to
Monitor an Agency
for which it
is Responsible.*

The Ombudsman's assistance to Mr. S regarding problems he encountered in applying for a supervisory position resulted in him receiving an apology and a cheque, and personnel policies were changed.

Mr. S wasn't invited for an interview for a supervisory job with a provincial agency, even though he felt he had all the qualifications listed in the advertisement. He asked the Ombudsman for help.

The Ombudsman's investigation revealed that the decision not to grant Mr. S an interview had been based on criteria which had not been part of the selection process. In addition, the decision had been based on hearsay information without giving Mr. S an opportunity to respond. The Ombudsman found this was not just.

She recommended that the agency take steps to ensure adherence to the staffing policies and procedures outlined in the Ontario Manual of Administration, and that personnel decisions be based only on relevant, reliable information. As a result of the Ombudsman's recommendations, the agency provided Mr. S with a written apology and compensation for unjustly denying him the opportunity to be interviewed.

Usually governmental organizations accept the Ombudsman's recommendations.

Ms. S asked the Ombudsman for help because of her concerns that the Public Trustee had not properly managed her mother's financial affairs when it rented four properties owned by her mother at rates which she felt were unreasonably low.

The Ombudsman's investigation revealed one property had been rented to another daughter at no cost; a second property was rented by a grandson but no rent had been paid for eighteen months. One unit had been left vacant for six months, and the fourth had been rented at no cost to tenants who agreed to make repairs.

The Ombudsman concluded that while the Public Trustee had not been unreasonable in the case of the other daughter, the Public Trustee should have

collected rent from the grandson, that the third unit should not have been left vacant, and that any difference between the costs of repairs and the rent should have been collected for the fourth unit. The Public Trustee agreed and reimbursed the estate.

To assist Mr. A receive equitable compensation for his summer work for a Ministry, the Ombudsman located a government policy which had been overlooked by a Ministry in reaching its decision.

Mr. A worked during the summer for a Ministry. He found that students in a co-op program doing identical work in other offices of the Ministry had been paid a wage higher than that allocated for summer students.

He complained to the Ombudsman, who drew to the Ministry's attention a section of the Ontario Manual of Administration which allows an increased rate of pay for students when certain conditions apply. The Ministry agreed with the Ombudsman's suggestion that Mr. A be paid the difference between his pay and that of the co-op students, and a cheque for nearly \$800 was issued to him.



Failure of a Governmental Organization to Adhere to Its Own Processes, Guidelines, and Policies, or to Apply Them in a Consistent Manner

A *prisoner whose medical problems were being ignored received prompt attention as the result of the Ombudsman's intervention and action by Corrections officials.*

A lawyer contacted the Ombudsman on behalf of his client who had encountered problems after a shift to a different facility. Despite his medical problems, he had not been examined by the new facility's physician; he had been refused access to special footwear provided by a previous facility as the result of a doctor's recommendation; he had been refused a second inhaler required for adequate relief from his asthma, and as the result of frequent moves, there had been a miscalculation of his canteen credits.

Cooperation from officials from the Ministry of Corrections resulted in prompt arrangements being made. Within 24 hours, the inmate had been scheduled for a doctor's appointment, had received access to his special footwear, was satisfied with the explanation given as to why a second inhaler was no longer necessary, and his canteen account was adjusted to reflect a satisfactory new balance. **5**

Mr. W
complained
of an
unreasonable
prison
routine and
restriction of
his right to
communicate
with the
Ombudsman.

Mr. W brought two complaints to the Ombudsman. He said that after he had been placed in a segregation cell for misconduct, the shift supervisor refused to allow him to phone his lawyer or the Ombudsman.

He also complained that while he was in segregation, his mattress was removed from his cell at 5 a.m., even though breakfast was not served until 7 a.m.

As a result of the Ombudsman's investigation, the Ministry of Correctional Services issued a directive that except in certain circumstances, phone calls to a lawyer or the Ombudsman must be allowed even for persons in segregation.

In regard to the second matter, the institution agreed to remove mattresses just prior to breakfast being served.

O*ften the Ombudsman can assist a Ministry to find a creative way to respond to individual circumstances and still comply with its regulations.*

A person receiving a Family Benefits Allowance came to one of the Ombudsman's district offices in northern Ontario when the Ministry of Community and Social Services did not release his cheque, and he was left without funds. His father had died recently, and the Ministry required information regarding any possible inheritance which would make him ineligible for benefits.

After discussions with the Ministry, an arrangement was agreed to whereby the cheque would be released if a form was signed permitting the Ministry to make direct inquiries to determine if an inheritance was forthcoming.

T*he Ombudsman investigated a complaint that prisoners who requested medication were being punished.*

Mr. B reported to the Ombudsman that the health care unit of his correctional facility confined inmates to a medical observation cell for two or three hours after they had received a Tylenol. He contended this practice was a form of punishment for people who requested medication.

The Ombudsman's investigation and subsequent discussions with the facility's staff resulted in revision of policies which related to Mr. B's complaint.

R*efusal of an Institution to Provide Proper Toiletry Articles*

Mr. Y called the Ombudsman after he had been refused the type of hair dressing which he requested and which was appropriate for his type of hair. He took pride in his appearance, he said, and the standard dressing provided by the institution might

have been satisfactory to most prisoners, but it was unsuitable for his needs. A member of the Ombudsman's staff brought this to the attention of the superintendent, who agreed to provide the appropriate hair dressing.

A*n Inmate's Ability to Correspond in the Cree Language Was Restricted*

Mr. W complained to the Ombudsman that staff at the facility where he was confined pressured him not to write letters to his family in Cree because the staff could not screen them. The staff had held letters back until an interpreter could screen them, and in the meantime, the letters were lost.

In the Ombudsman's investigation, the institution acknowledged that inmates should be free to write in the language of their choice, and that it was the institution's responsibility to secure an interpreter for prompt screening or, in the absence of strong reason to the contrary, to release letters without screening. It acknowledged that its handling of Mr. W's situation was inappropriate. Apologies were made to Mr. W.



A Decision or Policy Has an Adverse Impact or Discriminatory Consequence for an Individual

O*fficers involved in an altercation should not subsequently escort inmates involved to the hospital for treatment of their injuries.*

In the investigation of a complaint, the Ombudsman noted that correctional officers and inmates alike would be well-served by a policy that officers who had been involved in an altercation with inmates should not serve as the escorting officer if the inmate requires outside medical attention.

The Ombudsman suggested a policy change to the Deputy Minister of Corrections, and a directive was issued to all institutions requiring them to provide medical escort officers who were not involved in the altercation which made

7

The Ombudsman helped Ms. M receive compensation when road construction resulted in contamination of the well used by her family.

Some time after the Ministry of Transportation carried out some road construction near Ms. M's home, the family noticed the water in their well had a bad smell and brown colour. They complained to the Ministry of Transportation, which asked the Ministry of the Environment to investigate.

When Environment reported there was no proof that the problems with the well could be linked to the construction work, Ms. M asked the Ombudsman to look into the matter.

Following representations by the Ombudsman's staff, the Ministry of the Environment agreed the case should be reviewed and subsequently decided the water problem was indeed linked to the road construction work.

As a result, the Ministry of Transportation agreed to pay for a new well, to provide bottled water in the interim, and to reimburse the family for the water treatment system it had installed.

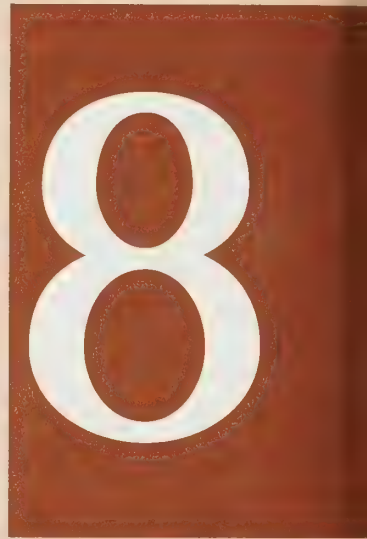


Mr. W's complaint to the Ombudsman resulted in a ministry improving its public communications policies.

When Mr. W believed a real estate broker did not act fairly and within the law in a property transaction, he brought his concerns to the Ministry of Consumer and Commercial Relations. But he was satisfied neither with the outcome of the investigation nor the Ministry's investigative process since he had not been contacted during the investigation and he had not been provided with a final report.

Since Mr. W and the broker were involved in court over the issue, the Ombudsman did not investigate the Ministry's conclusions. She did, however, make suggestions regarding the Ministry's investigative process, and the Ministry has implemented improvements in its policies. **8**

8



*An Inadequate
or Improper
Investigation is
Conducted*

Investigations by the Ombudsman led to the implementation of improved notification procedures by a major administrative tribunal.

The Ontario Municipal Board has the power to vary its decisions – but several parties to Board hearings came to the Ombudsman complaining that the Board had failed to notify them regarding its intention to consider a variation. As a result, they did not have an opportunity to make their comments known.

In one instance, a ratepayer who had put forward objections to a subdivision plan was satisfied that certain conditions had been attached to the draft plan approval.

The Board subsequently approved amendments to the conditions and gave final approval to the plan without notifying the objecting ratepayer.

As a result of the Ombudsman's investigations, the Board instituted stricter notice procedures when a request to vary is being considered. It decided that parties previously involved in draft subdivision plan hearings would receive notice of variation requests which affect positions taken by them at previous hearings. With regard to other categories of decisions, the Board decided that where a request to vary has substance, it would contact all interested persons of whom it has notice, and give such persons the opportunity to comment. 9



*Unfairness
in Hearing
Procedures*

As the result of a complaint to the Ombudsman by a patient at a provincial psychiatric facility that she was forcibly administered medicines which controlled her behaviour, a new “chemical restraint” policy was implemented.

In order to investigate Ms. K's complaint, the Ombudsman interviewed Ministry personnel, reviewed relevant legislation, examined the hospital's policies and procedure, and checked her clinical record. The hospital showed that Ms. K had been administered injections several times to control her aggressive behaviour. However, there was no clear policy statement against which the hospital's decision could be weighed.

Following discussion with the Ombudsman's staff which included a review of procedures at other institutions, the hospital established and implemented a fairer policy regarding the use of chemicals when it is necessary to restrain a patient's behaviour.



When Mr. D complained about personnel policies and procedures of the OPP, the Ombudsman was able to encourage adoption of fairer policies.

Mr. D is a native person who was recommended to the Commissioner of the OPP for a special constable position available on his reserve, but his application was turned down for what he considered to be unfair criteria.

After investigating the matter, the Ombudsman found that while the OPP had been justified in rejecting the application because Mr. D did not meet the required physical standards, the procedure which had been followed should be improved. As a result of proposals made by the Ombudsman, the OPP agreed that in the future, there would be better communications between the OPP and band councils, and that written reasons would be provided to any unsuccessful candidate.

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Insufficient or Lack of Reasons for a Decision

*The Ombudsman
recommended that
Mr. M be compensated
because of a clear
violation of fair process re-
garding his employment
application.*

Mr. M had worked for seven years as a bus driver for a provincial agency, when an accident off the job caused the loss of an eye. Since he could not be a driver, he applied for the position of Bus Operations Assistant. Of the eleven candidates interviewed, the manager found Mr. M to be the most suitable. However, the position was given to another person.

Mr. M told the Ombudsman he had been treated unfairly.

In her investigation, the Ombudsman found that the agency had taken into account inappropriate factors in arriving at its decision, including the fact that he had made a complaint to the Ontario Human Rights Commission over the loss of his commercial driver's licence. The investigation also determined that information on Mr. M's personnel record was inaccurate, and that he had not been given an opportunity to refute that information.

The Ombudsman recommended that the agency improve its procedures to insure fairness in future competitions. She also recommended that the Mr. M be compensated for the loss of employment he had suffered. The agency agreed to the procedural recommendations and paid Mr. M \$10,000 in compensation.

The Ombudsman is sometimes able to provide emergency situations with rapid resolution.

Example 1:

The Ombudsman received a telephone call one Friday afternoon from a person who needed help getting a bureaucratic mix-up resolved so she would have a driver's licence in order to get to work that very evening.

The Ministry of Transportation had mistakenly suspended her licence for six demerit points because they thought she was a probationary driver. The Ministry acknowledged its error and agreed to "rush" a correction – it could not do so because another agency had her listed as not having paid a fine.

It seemed that although she had paid a speeding ticket eight months previously, no one at Provincial Court had told her there was a \$10 late payment fee, nor did anyone ask her to pay it. Although she had paid the \$10 on Thursday, and although the Attorney General's Defaulted Fines Control Centre acknowledged the Provincial Court had made an error, it would not reinstate her licence – because of the Ministry of Transportation's suspension.

The Ombudsman was able to get the full story before both agencies. The suspensions were promptly lifted. A temporary licence was issued by the Ministry in the driver's hometown in time for her to report for work that evening.

Example 2:

A second matter involving a driver's licence problem was resolved in less than 24 hours.

An application to renew a driver's licence was refused because the licence had been suspended for failure to pay a speeding ticket. The driver found that a payment made with a postal money order had not been recorded at the courthouse, perhaps because the court's computer system was undergoing changes at that time. So, he paid the fine again and received a receipt.

However, he learned that despite the duplicate payment, it would take at least two weeks to have the suspension removed from the police computer system. He needed the licence so he could drive to work.

The Ombudsman's staff contacted the Ministry

of Transportation, which agreed to immediately issue a temporary driver's licence.

A worker asked the Ombudsman to help with a claim for overtime when accurate records were not available.

Mr. H was an inspector for an Ontario agency with assignments which required long hours, overnight stays, and weekend travel. However, when he left his employment, he was told that some of this overtime had been balanced off by other times when there was less work to do, and he would not receive the overtime he expected. Although the issue of balance was factually true, he felt he had been unfairly denied wages to which he was entitled.

He came to the Ombudsman for assistance. The Ombudsman reviewed daily activity sheets and brought to the agency's attention that the amount of overpayment was

less than the agency had thought. The agency agreed to pay its former employee for the days identified as underpaid, and a cheque for over \$5,000 was issued.



Failure to Keep a Proper Record

Sometimes the Ombudsman cannot support the initial complaint, but nonetheless, the investigation results in improvements in procedures which will help others.

Ms. R considered the termination of her contract with a Ministry as unreasonable, since she felt she had performed her duties in a satisfactory manner. She asked the Ombudsman to look into the matter.

The Ombudsman's investigation determined that Ms. R's discharge had happened because of a serious breach of conflict of interest guidelines, and that Ms. R's complaint could not be supported.

However, the Ombudsman made several suggestions regarding procedural fairness. The Ministry agreed to change its policies so that a discharged employee could have her own side of the story included in her personnel file, and so that an employee's positive accomplishments would also be included in her employment history.

With the Ombudsman's assistance, Mr. B had incorrect information removed from his record.

Mr. B was confined in a provincial correctional institution when he approached the Ombudsman with a complaint that incorrect information had been recorded in his classification report, and as a result, his chances of parole could be diminished.

The Ombudsman investigated and discovered that indeed allegations in the report could not be substantiated. As a result, the Ministry of Correctional Services wrote to the Parole Board to correct the error. **12**

Mr. M complained to the Ombudsman so he could receive proper medical attention.

Mr. M suffered from a long-standing medical condition. He was transferred frequently from one institution to another during his incarceration, and one institution failed to note that rehabilitative therapy was needed on a regular basis. There was also some confusion about the maintenance of Mr. M's health-care records.

He asked the Ombudsman to look into the matter. When the occurrence was brought to the attention of the Ministry of Correctional Services, it agreed to review its procedures. It now uses a new form to highlight necessary medical services which should be provided to transferring inmates.

**SPECIAL
INVESTIGATIONS
AND CASES
DEMONSTRATING
IMPORTANT
PRINCIPLES.**

Mr. G. approached the Ombudsman because he felt he had been unfairly denied compensation by the Criminal Injuries Compensation Board for injuries he received while attempting to arrest thieves who had broken into his home.

In investigating the matter, the Ombudsman

determined that the Board had acted correctly, since the *Compensation for Victims of Crime Act* specifically prohibits compensation for an injury resulting from an arrest or attempt to arrest in an offence against his or his dependents' property.

The Ombudsman went further in her investigation, however. She found that this limi-



tation was one of the most restrictive in Canada, and that in any other province, the victim may well have been compensated.

The Ombudsman asked the Attorney General to consider the facts of this case and the principles involved so that appropriate revisions could be made in the *Act*.

M*Ms. D found the Ombudsman helpful in getting a rehearing before the Criminal Injuries Compensation Board which resulted in her claim for compensation being paid.*

Ms. D was separated from her husband because of a long history of family violence. One evening she attended a party in her small community, and found her husband was also a guest. She accepted a ride home with him, during which he assaulted her, leaving her with a broken neck. He was convicted, and she made a claim to the Criminal Injuries Compensation Board.

The Board refused her compensation saying she had been aware of the history of violence when her husband was drinking, and should have known the consequences of associating with him.

Ms. D felt the decision was unreasonable, and asked the Ombudsman for assistance. After an investigation, the Ombudsman found that the Board did not have policies or directives to identify the relevant factors to be considered in assessing applications for compensation. It was recommended that Ms. D be given a new hearing. The Board consented to a court action in order that it might have jurisdiction to hold the new hearing. This hearing resulted in an immediate decision that Ms. D was compensable, and an award of \$16,000 was made.

**SPECIAL
INVESTIGATIONS**

THE OMBUDSMAN CO-OPERATES WITH HER COUNTERPARTS IN OTHER PROVINCES TO ASSIST PERSONS RESIDING OUTSIDE ONTARIO TO DEAL WITH THEIR CONCERNS REGARDING ONTARIO GOVERNMENT MATTERS.

The former Newfoundland Parliamentary Commissioner asked the Ontario Ombudsman for assistance with regard to Mr. A, a Newfoundland resident who had purchased an automobile in Ontario for permanent use in his home in Newfoundland. The Ontario car dealer had assured Mr. A there would be no difficulty in obtaining a refund for the Ontario Retail Sales Tax by the out-of-province purchaser.

However, not only did Newfoundland insist that Mr. A pay Newfoundland sales tax in order to have his vehicle registered, but the Ontario Ministry of Revenue refused to refund sales tax because Mr. A had not removed the vehicle within 30 days as stipulated in the *Ontario Retail Sales Tax Act*. Mr. A said that since he had never been told of this time limit, the Ministry's decision was unreasonable and that some discretion should be used since he had paid sales tax twice.

After the Ombudsman advised the Ministry of this situation, the Ministry reviewed the case and recommended to Cabinet that Mr. A receive compensation for the tax he had paid. An Order-in-Council authorized a payment of nearly \$1,000 be sent to Mr. A.

Ombudsman's SURVEY of Public Opinion

In the winter of 1991-92, the Ombudsman commissioned a scientific computer-assisted telephone survey of randomly-selected Ontario residents. The survey took place between February 18 and March 3, 1991. A high response rate was achieved.

The survey classified respondents as “more vulnerable” if any of the following conditions were met: the respondent said that he or she was a member of a racial minority; the respondent had come to Canada sometime in the last five years; the respondent was for health reasons limited in the things he/she can do on a day-to-day basis; the respondent was a single parent.

The survey revealed:

- ▶ one person in five said they had a complaint in their dealings with government administration. Most frequently, the complaint was about excessive delay or an unfair decision, and most had done nothing about the complaint;
- ▶ those most vulnerable have a higher proportion of complaints;
- ▶ very few people (0.6%) contacted the Ombudsman about their complaint;
- ▶ 69% are aware of the Ombudsman, and generally had an accurate perception of the Ombudsman’s jurisdiction and mandate – but awareness was positively correlated with education, negatively correlated with vulnerability. And awareness was low compared to the Ontario Human Rights Commission (95%) and the Worker’s Compensation Board (97%).
- ▶ 52% of Ontarians feel that they are not well protected against unfair government action. This sense is particularly marked among those who are most vulnerable.

A number of interesting attitudes about the Ombudsman emerged from the survey:

- ▶ 69% of Ontarians prefer an Ombudsman who acts impartially, while 18% preferred an Ombudsman who acts as an advocate for the complainant;
- ▶ 73% favour an Ombudsman who can recommend changes to unfair laws and practices;

▶ 53% wanted the Ombudsman to look into general problems lying behind specific complaints. The public wants to see the Ombudsman take effective action in bringing about changes in unfair government practices which would benefit all residents of Ontario even more than providing remedies for individuals.

▶ 90% felt it was important for the Ombudsman to reach out equally to all residents of Ontario, and 60% favoured special emphasis on reaching out to those most vulnerable. Half the respondents said they expected the Ombudsman “to help those who need help most.”

▶ 46% of those surveyed were sceptical of the Ombudsman’s independence from government influence. This sense increased as the degree of vulnerability increased.

▶ 71% of Ontarians favour an Ombudsman who can provide quick results while 75% want an Ombudsman who provides free services.

The survey revealed that the Ombudsman’s network of regional offices is particularly important in promoting the perception of easy access to the services of the Ombudsman. Currently, only a slim majority of Ontarians feel it is easy to get access to the Ombudsman.



STATISTICAL DATA

During the 1990-91 fiscal year, the Ombudsman dealt with 31,036 inquiries and complaints.

Figure 1 provides a breakdown by organization of all inquiries and complaints which were closed during the fiscal year. Inquiries and complaints about provincial governmental organizations formed the majority.

Figure 2 shows the final resolution of all inquiries and complaints which were closed during the fiscal year, including those not within the jurisdiction of the Ombudsman.

- In 24,664 cases (79.5%), a referral was given, or an inquiry was made on behalf of the complainant.
- In 2,303 cases (7.4%), even though the complaint was not strictly within her jurisdiction, the Ombudsman was able to facilitate a satisfactory resolution of the matter.
- Of the 2,232 cases (7.2%) discontinued during the fiscal year, 1,626 were discontinued by the Ombudsman because there was an adequate alternative remedy available to the complaint, or no further investigation was necessary.

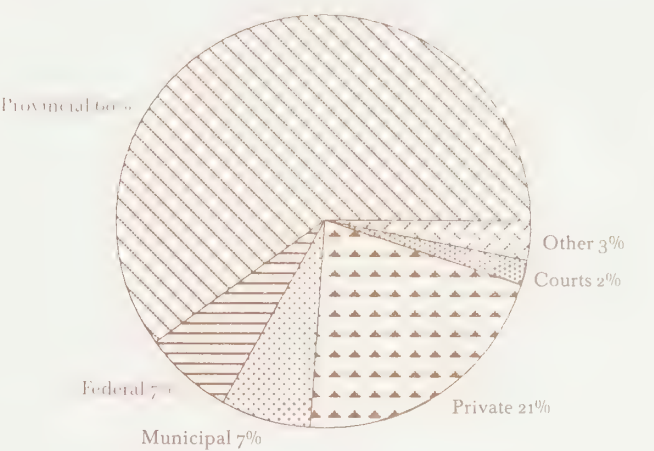
Figure 3 shows the final resolution of all inquiries and complaints which were closed during the fiscal year regarding provincial government organizations.

Figure 4 illustrates the proportion of complaints resolved by the Ombudsman through stages of the formal investigation process.

Corrections complaints have formed a large proportion of the inquiries and complaints made to the Ombudsman. This fiscal year, for the first time, the Ombudsman is devoting a portion of the statistical data report to corrections complaints. Figure 5 illustrates the total number of inquiries and complaints which were closed by the Ombudsman and the way in which they were resolved. Figure 6 breaks down the corrections complaints and inquiries by subject matter.

1990-91 Closed Complaints and Inquiries Involving Both Provincial and Non-Provincial Agencies

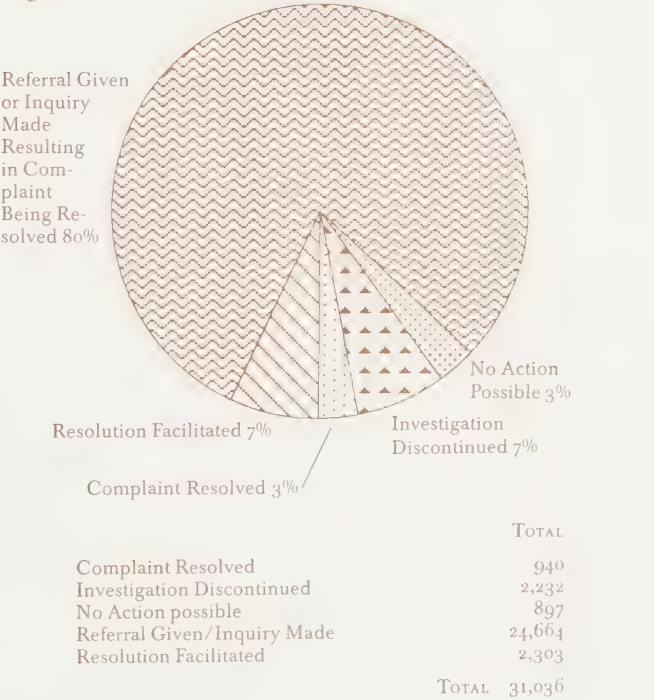
Figure 1



Agency	Total Inquiries	Total Complaints	TOTAL
Provincial	11,620	6,843	18,463
Non-Provincial	—	—	—
Federal	2,063	222	2,285
Municipal	1,677	375	2,052
Private	6,043	616	6,659
Courts	547	87	634
Other	862	81	943
TOTAL			31,036

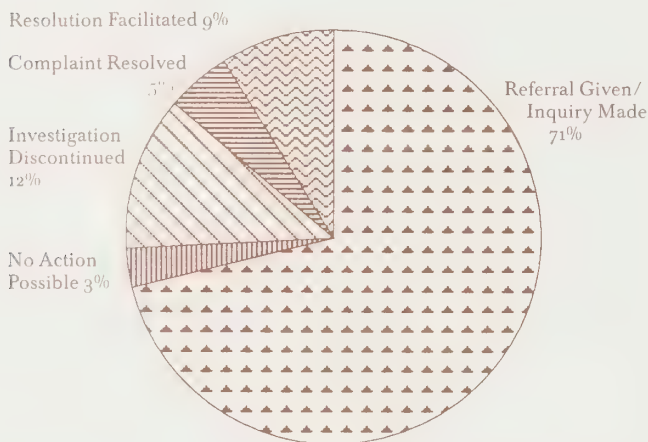
All Complaints And Inquiries By Final Resolution

Figure 2



Provincial Complaints And Inquiries By Final Resolution

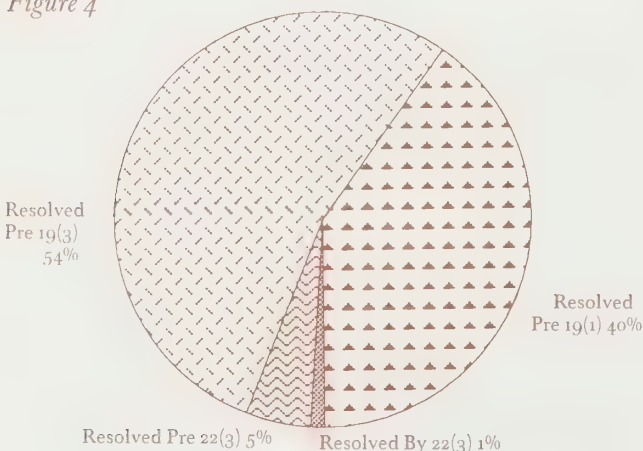
Figure 3



	Total Inquiries	Total Complaints	TOTAL
Complaint Resolved			940
By Ombudsman in Favour of Complainant		515	
By Ombudsman in Favour of Government Organization		319	
By Ombudsman in Favour of Government Organization with Suggestions		23	
By other		83	
Investigation Discontinued			2,232
By Complainant		577	
By Ombudsman		1,655	
No Action Possible	403	129	532
Referral Given/ Inquiry Made	10,369	2,741	13,110
Resolution Facilitated	848	801	1,649
TOTAL	11,620	6,843	18,463

Resolved Complaints By Stages Of Investigation

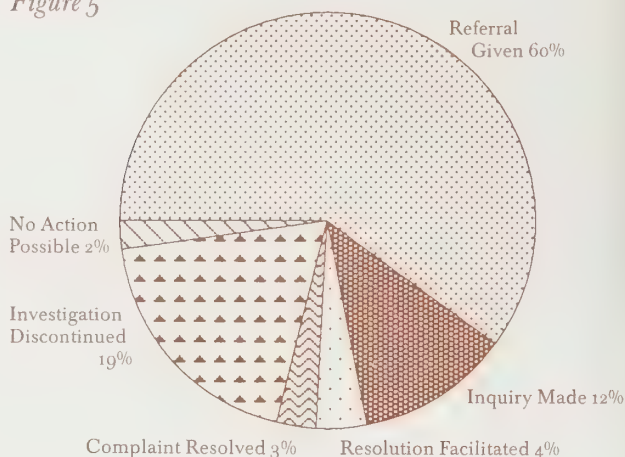
Figure 4



Resolved Before Notice of Intent to Investigate (Section 19(1))	378
Resolved After Notice of Intent to Investigate and Before Tentative Report (Section 19(3))	502
Resolved After Tentative Report and Before Final Report (Section 22(3))	48
Resolved After Final Report (Section 22(3))	12
TOTAL	940

Corrections Complaints And Inquiries By Final Resolution

Figure 5



	Total Inquiries	Total Complaints	TOTAL
Complaint Resolved			257
By Ombudsman in Favour of Complainant		182	
By Ombudsman in Favour of Government Organization		22	
By Ombudsman in Favour of Government Organization with Suggestions		2	
By other		51	
Investigation Discontinued			1,640
By Complainant		394	
By Ombudsman		1,246	
No Action Possible	140	16	156
Referral Given	5,135	179	5,314
Inquiry Made	1,054	51	1,105
Resolution Facilitated	355	16	371
TOTAL	6,684	2,159	8,843

Corrections Complaints And Inquiries By Subject Matter

Figure 6

Number of Complaints	Subject Matter
1,338	Classification/Transfer/Committal
1,189	Other
1,161	Health Care/Medical
772	Living Conditions in General
696	Discretionary Program Decisions
532	Living Conditions - Food Diet
507	Institutional Discipline
403	Living Conditions - Canteen Allowance Program
373	Staff Misconduct
326	Personal/Inmate Property
206	Living Conditions - Segregation
187	Parole
145	Policy/Practice
79	Living Conditions - Overcrowding
74	Staff Misconduct - Assault
55	Living Conditions - Smoking
44	Telephone Access/Use
33	Ombudsman Letter Denial
31	Staff Complaints
22	Freedom of Information/Protection of Privacy
13	Medical - AIDS/Hepatitis
12	Charter of Rights
8	Probation
6	Ombudsman

ACTUAL EXPENDITURES FOR THE FISCAL YEAR 1990-91

Salaries	\$5,030,725
Employee Benefits	1,120,404
Travel & Relocation	189,777
Telephone, Mailing & Delivery	252,532
Building Rent	718,564
Equipment & Other Rentals	98,518
Professional Services	284,480
Security Services	63,230
Computer Equipment & Software Maintenance	50,517
Other Services	156,723
Furniture & Office Equipment	44,176
Computer Equipment & Software	47,510
Office Supplies & Devices	67,684
Books & Publications	43,771
Printing of Reports & Procedures	50,836
Other Supplies & Equipment	48,953
Total	\$8,268,400

PRESENTATIONS

MADE BY THE OMBUDSMAN IN 1990-91

April 11, 1990	University of Western Ontario, Faculty of Law, London
April 27, 1990	Granite Club, Toronto
April 28, 1990	Ontario Multiculturalism Association, Markham
May 15, 1990	Ontario Legislative Interns, Toronto
May 16, 1990	Orillia and District Canadian Club
May 18, 1990	Supreme Court of Canada Seminar for the Austrian Constitutional Court, Ottawa
May 24, 1990	Dalhousie University Convocation, Faculty of Law, Halifax, Nova Scotia
May 28, 1990	Council of Canadian Administrative Tribunals, Ottawa
June 1, 1990	Ontario Provincial Police Annual Conference, Toronto
June 6, 1990	"Chairpersons' Circle" meeting of Chairs of Tribunals, Agencies, Commissions and Boards, Toronto
June 21, 1990	Grade 8 Graduation, Howard-Harwich Moravian Public School, Ridgetown
July 16, 1990	Public Service Pension Board, Toronto
September 6, 1990	Ministry of Community and Social Services Operations Management Committee, Toronto
September 7, 1990	Brantford Rotary Club
September 12, 1990	Ontario Native Council on Justice, Toronto
September 20, 1990	National Ombudsman Conference, Halifax
September 25, 1990	Inter-Agency Luncheon, Sault Ste. Marie
October 21, 1990	Black Business and Professional Association, Harry Jerome Scholarship Awards, Toronto
October 30, 1990	Ontario Arts Council Board, Toronto
November 15, 1990	Office of the Official Guardian, Toronto
November 18, 1990	Policing in the Nineties Conference, Aylmer Police College
November 29, 1990	Association of Professional Executives of the Public Service of Canada, Ottawa
December 8, 1990	Ontario Housing Corporation, Toronto
December 9-10, 1990	National Conference on Human Rights, Ottawa
December 18, 1990	Metro Toronto Housing Authority Board and Staff
January 24, 1991	Employment Equity Branch, Public Service Commission, "Going Beyond Employment Equity"
February 4, 1991	Minister's Advisory Council, Department of Corrections
February 6, 1991	University of Ottawa, Faculty of Law
February 13-14, 1991	University of Toronto, Faculty of Law, Goodman Fellowship Lectures
March 8, 1991	Fisherville Jr. High School, Toronto, on International Women's Day
March 19, 1991	Law Society of Upper Canada Call to the Bar Ceremony, London

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 John ALLAN
 Marney ANDERSON
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 Leticia ZAPANTA



The Ombudsman's Staff

(as of March 31, 1991)

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